(26,250)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 783.

THE PENNSYLVANIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

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1-3 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Superior Court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Superior Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Pennsylvania Railroad Company, Appellant, and The Public Service Commission of the Commonwealth of Pennsylvania, Appellee, and Order of Railway Conductors and Brotherhood of Railroad Trainmen, Intervening Appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right privilege, or immunity was claimed
4 under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Appellant, The Pennsylvania Railroad Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the second day of November, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

5 [Endorsed:] Supreme Court of the United States, October Term, 1917. The Pennsylvania Railroad Co. vs. The Public Service Commission of the Commonwealth of Pennsylvania et al. Writ of Error. Filed in Superior Court, Harrisburg District, Nov. 5, 1917.

6 UNITED STATES OF AMERICA, *ss:*

To Public Service Commission of the Commonwealth of Pennsylvania, Order of Railway Conductors and Brotherhood of Railroad Trainmen, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Superior Court of the State of Pennsylvania wherein The Pennsylvania Railroad Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, this second day of November, in the year of our Lord one thousand nine hundred and seventeen.

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

7 On this seventh day of November, in the year of our Lord one thousand nine hundred and seventeen, personally appeared Herbert C. Stout before me, the subscriber, Henry E. Cain, a Notary Public for the Commonwealth of Pennsylvania residing in the City and County of Philadelphia and makes oath that he delivered a true copy of the within citation to Benjamin M. Golder, in charge of the office of William N. Trinkle, Counsel for the Order of Railway Conductors and Brotherhood of Railroad Trainmen.

Sworn to and subscribed the 7th day of November, A. D. 1917.

[Seal Henry E. Cain, Notary Public, Philadelphia, Pa.]

HENRY E. CAIN,
Notary Public.

Commission expires February 21, 1919.

I hereby accept service of the within notice upon the Public Service Commission of the Commonwealth of Pennsylvania, November 5, 1917.

BERNE H. EVANS, *Counsel.*

[Endorsed:] No. 13. March Term, 1917. Citation. Filed in Superior Court, Harrisburg District, Nov. 9, 1917.

8 The Answer of the Judges of the Superior Court of the State of Pennsylvania to the Writ of Error from the Supreme Court of the United States, hereunto annexed, as follows, to-wit:

9 *Docket Entries.*

Complaint Docket, #489.

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILROAD TRAINMEN, by S. R. Tarner, Chairman Pennsylvania State Legislative Board, Order Railway Conductors,

VS.

PENNSYLVANIA RAILROAD COMPANY.

1915.		
November	16th.	Complaint filed.
December	1st.	Respondent files Answer.
December	21st.	Hearing.
1916.		
April	18th.	Argument.
July	7th.	Order of Commission issued.
July	14th.	Counsel for Complainant and Respondent acknowledge receipt of Report and Order of Commission.
August	12th.	Pennsylvania Railroad Company files notice of appeal to Superior Court from the order of the Commission.

10 COMMONWEALTH OF PENNSYLVANIA, *ss:*

I do hereby certify that the attached is a true copy of the Docket Entries made in the case of Order of Railway Conductors and Brotherhood of Railroad Trainmen, by S. R. Tarner, Chairman Pennsylvania State Legislative Board, Order Railway Conductors, Complaint Docket No. 489, as the same remain of record and on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of The Public Service Commission of the Commonwealth of Pennsylvania to be affixed, this eighth day of November, 1917.

[Seal The Public Service Commission of the Commonwealth of Pennsylvania.]

A. B. MILLAR, *Secretary.*

11 *Certificate.*

In the Superior Court of Pennsylvania, March Term, 1917.

No. 13.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, Appellee.

Part I.

To the Honorable the Judges of said Court:

The Public Service Commission of the Commonwealth of Pennsylvania hereby certifies that the within is a portion, designated as Part I, of the record of said Commission, so full and entire before it in the matter of the complaint of the Order of Railway Conductors and Brotherhood of Railroad Trainmen, by S. R. Tarner, Chairman, Legislative Board, Order of Railway Conductors vs. The Pennsylvania Railroad Company, the said portion consisting of the complaint filed in this case, the answer thereto, and the report and order of this Commission; the remaining portion of the record, designated as Part II, being separately certified.

In testimony whereof, The Public Service Commission of the Commonwealth of Pennsylvania has caused to be attached hereto the seal of the said Commission, duly attested by its Secretary this 16th day of August, 1916.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Attest:

[SEAL.] A. B. MILLAR, *Secretary.*

12 Form 31—A-2-M-4-12-16.

(Serial No. 3192.)

(File No. C489.)

(The Public Service Commission of the Commonwealth of Pennsylvania.

Nov. 16, 1915.

Office of the Secretary.)

The Public Service Commission of the Commonwealth of Pennsylvania.

Complaint.

Before The Public Service Commission of Pennsylvania.

ORDER OF RAILWAY CONDUCTORS, BROTHERHOOD OF RAILROAD TRAINMEN, by S. R. Tarner, Chairman Penna. State Legislative Board, Order Railway Conductors,

vs.

PENNSYLVANIA RAILROAD COMPANY.

The petition of the above-named Complainant respectfully shows:

(*a*) That complainant is a passenger Conductor upon the Pittsburgh Division of Pennsylvania Railroad, and Chairman of Pennsylvania State Legislative Board of the Order of Railway Conductors, residing at #6927 Bennett Street, Pittsburgh, Pa. Attorney James Scarlet, Danville, Pa.

(*b*) That the Respondent above-named is a Public Service Company engaged in the railway transportation business in Pennsylvania, and operating a railroad as a common carrier therein.

(*c*) That on the 9th day of November, 1915, the Pennsylvania Railroad Company run a train known as No. 1019, which left Altoona at 5:38 o'clock in the morning and arrived at Pittsburgh at 8:38 o'clock the same morning, consisting of eight (8) cars; two (2) express cars and six (6) United States mail cars. United States mail car No. 8627 was attached to the rear end of the train and this car did not have the rear end equipped as required by section seven (7) of the act of Assembly of June 19, 1915, entitled an "Act to promote the safety of travellers and employes upon railroads by compelling common carriers by railroads to properly man their trains," in that the rear end of the said rear United States mail car was not equipped with a platform thirty inches in width, and guard rails and steps as required by said act of assembly.

13 Wherefore the Petitioner prays that the Respondent may be required to answer the charges herein, and that upon a final hearing hereof, the Commission will make such order in the premises as may seem meet.

Dated at Harrisburg, Pennsylvania, Fifteenth day of November 1915.

——— ———.
——— ———.

STATE OF PENNSYLVANIA,
Dauphin County, ss:

On this 15" day of Nov., 1915, before me a- alderman, personally appeared S. R. Tarner, the above Complainant, who, being duly sworn according to law, deposes and says that the statements of facts contained in the above complaint are true and correct to the best of his knowledge and belief.

S. R. TARNER.

Sworn and subscribed before me the day and year aforesaid
[SEAL.] CHAS. EMMET MURRAY, *Ald.*

My commission expires 1st Monday in Jan. 1920.

Note.

(*a*) State Complainant's occupation, residence and place of business, and the name and post office address of his attorney.
(*b*) State concisely the general character of the business.
(*c*) State concisely the matters complained of, with dates and circumstances, and the ruling of statute violated, if any.

(Docketed: Complaint Docket, Nov. 18, 1915. Entry No. 1.)

(See other side.)

14 Rule 5 of the Rules of Practice (Circular No. 2) provides complaints must be by petition, in writing, duly verified by the affidavit of the Complainants, and shall contain a concise statement of all the material facts upon which the complaint is founded.

Said complaint must also set forth the name and post office address of the Public Service Company complained against, the full name and post office address of the Complainant, with the full name and address of the attorney or counsel, if any, of such Complainant.

If a violation of any statute, or of a ruling or order of the Commission, is complained of, attention should be called to the section of the statute or the particular ruling or order of the Commission.

At the time of the filing of any complaint, or of any petition, application or other communication, invoking the jurisdiction of the Commission, there shall be filed with the original, for the use

of the Commission and of the adverse party or parties, if desired, copies thereof, equal in number to three copies for each party to the record.

Before the Public Service Commission of the Commonwealth of Pennsylvania.

15 Complaint Docket, No. 489.

1915.

ORDER OF RAILWAY CONDUCTORS, BROTHERHOOD OF RAILROAD TRAINMEN, by S. R. Tarner, Chairman Penna. State Legislative Board, Order Railway Conductors,

v.

THE PENNSYLVANIA RAILROAD COMPANY.

Answer of the Pennsylvania Railroad Company.

In answer to the above named complaint the Respondent respectfully states:

(*a*) That it admits the allegations contained in this paragraph.

(*b*) That it admits the allegations contained in this paragraph.

(*c*) The Respondent admits the allegations contained in paragraph (*c*) of the complaint except that it denies that it was necessary to furnish a platform thirty inches in width, guard rails and steps on the car in question. This respondent further denies that Section 7, of the Act of June 19, 1911, entitled "An Act to promote the safety of travellers and employees upon railroads, by compelling common carriers by railroad to properly man their trains" is applicable to the aforesaid mail car. This Respondent avers that on the 9th day of November 1915, it ran and operated the said train No. 1019 in compliance with the law applicable thereto.

Wherefore the Respondent prays that the complaint be dismissed.

THE PENNSYLVANIA RAILROAD COMPANY,
By S. C. LONG, *General Manager.*

(Docketed: Complaint Docket, Dec. 3, 1915. Entry No. 3.)

16 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

S. C. Long, being duly affirmed according to law, deposes and says that he is the General Manager of The Pennsylvania Railroad Company, and that the facts set forth in the above and foregoing answer are true to the best of his knowledge, information and belief.

S. C. LONG.

Affirmed and subscribed before me this 30th day of November, 1915.

[SEAL.] HENRY E. CAIN,
Notary Public.

Commission expires February 21, 1919.

17 (Docketed: Complaint Docket, Jul- 25, 1916. Entry No. 22.)

Record.

The Public Service Commission of the Commonwealth of Pennsylvania.

Complaint Docket, No. 489

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILWAY TRAINMEN, S. R. TARNER,

vs.

PENNSYLVANIA RAILROAD COMPANY.

Report of the Commission.

AINEY, *Chairman:*

Section 7 of the act known as the Full Crew Law, approved June 19, 1911, provides that any train consisting of a United States mail car or express cars shall have the rear end of the rear car equipped "with exit free from obstruction, platform of thirty inches in width, guard rails and steps."

The complaint is that the respondent carrier operates a train over its railroad known as No. 1019 leaving Altoona at 5:38 A. M. and arriving at Pittsburgh at 8:38 A. M., consisting of eight cars, as follows: two express cars and six United States mail cars; that one of the mail cars was placed at the rear of the train and that it did not have the rear end equipped as prescribed by the act in that there was no platform thirty inches wide and no guard rails or steps thereon.

The answer of the respondent admits the allegations of the complaint but denies the conclusion thereof that the same is a violation of the law.

At the hearing and upon argument the respondent maintained that the Congress of the United States had legislated upon this subject and that the rear car upon respondent's train, a United States mail car, was constructed in accordance with the specifications and requirements of the Post Office department of the United States and that these specifications and requirements being in conflict with section 7 of the act of 1911, the section was void.

The Pennsylvania act referred to relates to the running, operating and manning of trains, and not to the construction of United States

mail cars, and is therefore in that respect not in conflict with any regulation of the postal service prescribed in pursuance of
18 authority granted by Congress.

There is nothing in these postal regulations requiring the rear end of a train to be a United States mail car; there is positive direction in the Pennsylvania statute prescribing certain provisions to be made on the rear car of any train in order that the safety of those concerned may be assured.

This can, and it was contemplated by the Full Crew Law that it should be accomplished, not by changing the form of construction of mail cars, but by selecting a particular type car for rear end train service. This the respondent has not done, it therefore has violated the provisions of section 7 of the act of June 19, 1911.

Has the Federal Government by legislation assumed jurisdiction and control of the subject matter to the exclusion of the states? We are not pursuaded that it has, but here again we must differentiate between the administrative duty and responsibilty of The Public Service Commission and the authority of the Courts. It is not for us to set aside the plain statutory provision of our own state. If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government not clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof we must accept and follow administratively the terms and provisions of the act we are charged with the duty of enforcing.

An order will be issued requiring the respondent to operate its train No. 1019 over its road with the rear end of the rear car thereof equipped with exit free from obstruction; with platform of thirty inches in width and with guard rails and steps.

By the commission.

WM. D. B. AINEY, *Chairman.*

19 Complaint Docket, 489.

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILWAY TRAINMAN, S. R. TARNER,

VS.

PENNSYLVANIA RAILROAD COMPANY.

Order.

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof:

Now, to-wit, July 7th, 1916, The Pennsylvania Railroad Com-

pany is hereby ordered to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction, with platform of thirty inches in width; and with guard rails and steps.

By the Commission:

[SEAL.] WM. D. B. AINEY, *Chairman.*

Attest:

A. B. MILLAR, *Secretary.*

20 (Serial No. 22643. File No. —.)

THE SUPERIOR COURT OF PENNSYLVANIA,
Sitting at Harrisburg, ss:

The Commonwealth of Pennsylvania to the Members of the Public Service Commission of Pennsylvania, Greeting:

We being willing for certain causes, to be certified of the matter of the appeal of The Pennsylvania Railroad Company from the order, determination and finding of said Commission in the case wherein the said appellant is Plaintiff and said Commission, Defendant, to No. 489, Complaint Docket, 1915, before you, or some of you, depending, do command you, that the record and proceedings aforesaid, with all things touching the same, before the Judges of our Superior Court of Pennsylvania, at a Superior Court to be holden at Harrisburg, the second Monday of next March, so full and entire as in our Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable George B. Orlady, Doctor of Laws, President Judge of our said Superior Court, at Harrisburg, the 11" day of August, in the year of our Lord one thousand nine hundred and sixteen.

[Seal of the Superior Court of Pennsylvania]

HOMER HUMMEL STRIKLER,
Deputy-Prothonotary.

21 To the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania, sitting at Harrisburg:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

——— ———. [L. S.]
——— ———. [L. S.]

[Endorsed:] No. 13. March Term, 1917. Superior Court. The Pennsylvania Railroad Company, Appellant, vs. The Public Service

Commission of the Commonwealth of Pennsylvania. Certiorari to the members of the Public Service Commission of Pennsylvania. Returnable the second Monday of March, 1917. Rule on the Appellate, to appear and plead on the Return-day of the Writ. Homer Hummell Strikler, Deputy-Prothonotary of Superior Court, Harrisburg District. Filed Aug. 17, 1916, in Superior Court. Costs $12.

22 *Certificate.*

In the Superior Court of Pennsylvania, March Term, 1917.

No. 13.

THE PENNSYLVANIA RAILROAD COMPANY (Appellant),

VS.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA (Appellee).

Part II.

To the Honorable the Judges of said Court:

The Public Service Commission of the Commonwealth of Pennsylvania hereby certifies that the within is a portion, designated as Part II, of the record of said Commission, so full and entire before it in the matter of the complaint of the Order of Railway Conductors and Brotherhood of Railroad Trainmen, by S. R. Tarner, Chairman, Legislative Board, Order of Railway Conductors vs. The Pennsylvania Railroad Company, the said portion consisting of exhibits introduced by the parties and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and the notes of testimony taken at the hearing before this Commission.

In testimony whereof, the Public Service Commission of the Commonwealth of Pennsylvania has caused to be attached hereto the seal of the said Commission, duly attested by its Secretary this 16th day of August, 1916.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Attest:

[SEAL.] A. B. MILLAR, *Secretary.*

23 (*Endorsements.*)

Serial No. 6313. File No. C-489.

File J. G. H.

The Public Service Commission of the Commonwealth of Pennsylvania.

Jan. 4, 1916.

Office of the Secretary.

Docketed: Complaint Docket. Jan. 7, 1916. Entry No. 6.

Guilbert & Lewis, C. H. Guilbert, Charles F. Phillips, T. Roy Phillips, Walter H. Lewis, Martin F. Moore, Victor G. Marquissee, John C. Wright, Law Stenographers, 519 Land Title Building, Philadelphia.

24 Complaint Docket No. 489.

1915.

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILROAD TRAINMEN, b- S. R. Tarner, Chairman Legislative Board, Order Railway Conductors,

vs.

PENNSYLVANIA RAILROAD, PITTSBURGH DIVISION.

Harrisburg, Pa.,

Tuesday, December 21st, 1915,

10 o'clock a. m.

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25 Complaint Docket No. 489.

1915.

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILROAD TRAINMEN by S. R. Tarner, Chairman Legislative Board, Order of Railway Conductors,

VS.

PENNSYLVANIA RAILROAD, PITTSBURGH DIVISION.

Hearing held before the Public Service Commission of the Commonwealth of Pennsylvania, in the State Capitol Building, at Harrisburg, Pa., Tuesday, December 21st, 1915, at 10 o'clock A. M.

Present:

Commissioners Monaghan, Magee and Pennypacker.
James Scarlet, Esq., Attorney for Complainant.
S. B. Lloyd, Esq.; J. E. B. Cunningham, Esq.; C. H. Bergner, Esq., Attorneys for Respondent.
Wm. N. Trinkle, Esq., Counsel for Commission.

26 Mr. Scarlet: The gravamen of this complaint is that on the 9th day of November, 1915, the Pennsylvania Railroad Company ran a train, known as No. 1019, which left Altoona at 5:38 o'clock in the morning and arrived at Pittsburgh at 8:33 o'clock the same morning, consisting of eight cars, two express cars, and United States mail car. United States mail car No. 8627 was attached to the rear of the train, and this car did not have the rear end equipped as required by section 3 of an act of the Assembly of June 19, 1911, entitled an "Act to promote the safety of travellers and employees upon railroads by compelling common carriers by railroads to properly man their trains," in that the rear end of the said United States mail car was not equipped with a platform 30 inches in width, and guard rails and steps, as required by said act of the Assembly.

The answer admits this statement of fact, but denies that it is within the provisions of the Act.

Section 7 of the Act is as follows:

"Sec. 7. It shall be unlawful for any railroad company, its officers or agents, officers of court, receiver, or any person or persons, doing business in this commonwealth, to run or operate over its road, or any part of its road, or to permit to be run or operated over its road, or any part of its road, any train consisting of United States
27 mail or express cars, without the rear end of the car being equipped with exit or observation platform of thirty inches in width, guard rails; also heating appliances to maintain a temperature of sixty-five degrees."

I will call Mr. Tarner, to explain the necessity for such equipment.

S. R. TARNER, having been first duly sworn, was examined and testified as follows:

By Mr. Scarlet:

Q. You are a passenger Conductor on the Pittsburgh division of the Pennsylvania Railroad, Mr. Tarner?

A. I am.

Q. Residing at Pittsburgh?

A. Yes, sir.

Q. And was train No. 1019, on the 9th day of November, 1915, under your observation at any time?

A. Yes, sir.

Q. Did you see it?

A. Yes, sir.

Q. Will you describe the train? Can you describe it?

A. Yes, sir.

Q. Will you describe it?

A. I will. This train consisted of eight cars, viz: two express cars, and six United States postal cars.

Q. Yes?

A. With United States postal car No. 8627 attached to the rear end.

28 Q. Yes?

A. And the rear end of the car did not have a platform thirty inches in width, and steps and guard rail as required by section 7 of the Act of the Assembly.

Q. Where was this train being run and operated at the time? Over what road?

A. Over the Pittsburgh division of the Pennsylvania Railroad.

Q. Will you explain to the commission what necessity there is for the rear end of the mail train to be equipped as required by the Act of the Assembly?

A. I will show it as near as I possibly can. The reason for the platform on the rear end of a car of that character, is to permit the trainmen to go out onto the rear of the train to display his marker lights, and get on and off the train with comparative safety.

Q. These cars, as they are now running them, and particularly in this case; is that car without a platform?

A. It has on the end of the car a very narrow—what we call a "bumper," perhaps six or eight inches in width. And the brakeman, to go out onto the rear end of the car to turn his marker lights, or to display his marker lights has got to crawl out on there and hold onto the grab-irons and side-stirrups, in order to perform that duty. The crew from time to time is required to get on and off the train, and to do that they have got to crawl on and off the

29 train from the side of the car, using the side stirrups; which, we contend is a very dangerous thing to do.

Q. You mean to say that this work of changing the markers is required to be done while the train is in motion, at any time at all?

A. Yes, sir; while the trains are travelling from one track to

another, the flagman is required to go out there to turn his marker lights, to indicate the track the train is running on.

Commissioner Monaghan: Where are those marker lights placed?

A. They are placed at the end of the car.

By Mr. Scarlet:

Q. What necessity is there for a platform to do that, to enable him to do that—for a platform there of thirty inches? Kindly explain that.

A. Well, it is much safer than the platform there, than to be compelled to crawl out on the rear of the car, when the train is running at high speed, without a platform to get onto.

Q. That platform is required to be guarded with a rail over it?

A. It is, yes, sir.

Mr. Scarlet: That is all.

No cross-examination.

Mr. Scarlet: That is all; that is our case.

30 Mr. Lloyd: The full crew act, in section 7, provides that "it shall be unlawful for any railroad company, its officers, or agents, officers of court, receiver, or any person or persons doing business in this commonwealth, to run or operate over its road, or any part of its road, or to permit to be run or operated over its road, or any part of its road, any train consisting of United States mail or express cars, without the rear end of the car being equipped for exit with a platform thirty inches in width, guard rails, and also heating appliance to maintain a temperature of sixty-five degrees."

Q. The train in question consisted of two express cars and six United States mail cars. The last car of the train was No. 8627. The Pennsylvania Railroad, under the Acts of Congress is furnishing an equipment for the carrying of the mail. The Congress has delegated to the Interstate Commerce Commission the power, under the Act of 1910, "An act to supplement 'An Act to promote the safety of employees and travelers upon railroad by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes,'" to make specifications and to provide for safety appliances, and the Interstate Commerce Commission has acted in that respect.

31 The Congress has further provided that the postmaster-general of the United States shall determine what kind of cars shall be provided for the carrying of the mail. The train in question was carrying the mail, as I will show by witnesses, and was engaged in interstate commerce; and Congress having provided what kind of cars we shall furnish, and we having furnished that car, we contend that this section 7 has no effect, the matter being entirely in the hands of Congress.

Commissioner Pennypacker: Now, does the act of Congress provide anything concerning the question of the platform in the rear of the car?

Mr. Lloyd: Yes, sir, the act of Congress provides that we shall furnish a car with a stub end, similar to the car in question; and there is a reason for that, which I may just as well explain now, although I have witnesses and will call them later.

Many years ago, when the old cars were in use, it was found that the platforms on these mail cars were very difficult for the mail clerks to operate. They had to drag the mail from the storage car into the post-office car, or full-mail car; and here was also danger that evil-disposed persons might get onto the platforms and come into the mail cars. As the result of that the post office department objected to our furnishing the platform cars, and at first we boarded up the platforms, so that people could not get on there. Finally steel
32 cars were substituted, and that is the present car, which is furnished under the specifications provided.

Commissioner Pennypacker: Now, this is rather a difficult question——

Mr. Lloyd: It is, sir.

Commissioner Pennypacker: It is a rather difficult question. What is the duty of this Commission if it shall find that the statute of the state of Pennsylvania requires certain things for the safety of travellers and the safety of employees, and shall likewise find that the act of Congress provided otherwise? What would be the duty of this Commission, in your view?

Mr. Lloyd: The duty of the Commission, sir, is finally indicated and fixed by the supreme court of the United States, in the case of Erie Railroad vs. People of New York, 233 U. S., 671, where the state of New York passed a law requiring hours of employment; and congress has also, as you are well aware, a law, the terms of which are slightly different from the New York statute. It was argued in that case that the state could supplement the action of congress, but the supreme court said—I have the opinion here, but without quoting from it—the supreme court said that where congress has acted, a state cannot supplement or add to, or substract from, any federal regulation. That while the state has certain powers to regulate in safety matters, until congress acts, the instant congress
33 acts, that puts an end to all the powers of the state. I have, of course, referred in my brief to that matter.

Commissioner Pennypacker: Has the state supreme court followed that decision?

Mr. Lloyd: The state supreme court, has, yes, sir; I think so.

Commissioner Pennypacker: It is rather in the line of argument. Offer your testimony first.

Mr. Lloyd: I will refer to this case in my printed brief.

W. H. ZEHENDER, having been first duly sworn, was examined and testified as follows:

By Mr. Lloyd:

Q. Mr. Zehender, you are an employee of the Pennsylvania Railroad Company?
A. Yes, sir.
Q. In what capacity?
A. Chief Clerk to the Assistant to the President.
Q. And what are the duties of your office?
A. Among other duties, to look after the arrangements for the transportation of the United States mails, and communications with the Government in connection therewith.
Q. Will you state what arrangement there is with the Government, and under what authority, for carrying the mails between New York and Pittsburgh?
34 A. The arrangement is made with the Postoffice Department, by act of Congress of March 3, 1879, and subsequent acts of Congress, which provide for the transportation of mails by the railroads, and the furnishing of railroad postal cars in connection with the distribution of the mails en route.
Q. Now, you have a mail route between New York and Pittsburgh?
A. There are two mail routes, divided up by the postoffice department, for ease of operation and accounting, from New York to Philadelphia, and Philadelphia to Pittsburgh.
Q. And you run trains, and furnish cars to carry the mails between those two points?
A. Yes, sir; subject to the requirements of the postoffice department.
Q. Are you familiar with train No. 1019?
A. No, not other than the fact that we know there is such a train that was provided for carriage of the mails exclusively.

Mr. Lloyd: That is all.

Cross-examination.

By Mr. Scarlet:

Q. The requirements that you speak of refer only to the inside of the car, and not to the outside?
A. The requirements of inspection are the postal laws and regulations, so-called, issued by the postoffice department, which provide the regulations for the handling of the mails.
Q. Yes, but that is the inside of the car, and not with reference to the exterior part of the car?
35 Q. I am not speaking about the car.

Commissioner Magee: Have you a copy of those regulations?

Mr. Lloyd: I have another witness on that feature, and I will offer all those later.

Mr. Scarlet: I have no further questions, then.

S. M. RASMUSSEN, having been first duly sworn, was examined and testified as follows:

By Mr. Lloyd:

Q. You are an employee of the Pennsylvania Railroad?
A. I am.
Q. In what capacity?
A. As clerk.
Q. At my request did you go into the make-up of train No. 1019, as constituted and run on November 9th, 1915?
A. I did.
Q. Where did that train run from, and where to?
A. New York to Pittsburgh.
Q. How was the train made up?
A. Two express cars and six postal cars.
Q. Have you got the numbers of those cars?
A. Yes, sir.
Q. In the way that they were in that train?
A. The engine, followed by express car 6278, express car 6494, mail car 35999, mail car 35092, mail car 5640, mail car
36 6561, mail car 7410 and mail car 8627.
Q. No. 8627, then, the car complained of in this proceeding, was on the rear of the train?
A. It was.
Q. Now, was No. 8627 loaded with mail from New York to Pittsburgh on that day?
A. It was en route St. Louis.
Q. And was there or was there not any car on that train provided with a 30-inch platform?
A. No, sir.

No cross-examination.

Mr. Lloyd: I desire to offer in evidence the Act of April 14, 1910, 36 Statutes, 298, of Congress, entitled "An act to supplement 'An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes,' and other safety appliance Acts, and for other purposes."

I wish to call the Commission's attention to section 2 of that act, which provides as follows:

"Sec. 2. That on and after July first, nineteen hundred and eleven, it shall be unlawful for any common carrier subject to the provisions of this act to haul, or permit to be hauled or used on
37 its line any car subject to the provisions of this act not equipped with appliances provided for in this act, to wit: all

cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders."

I would call the attention of the Commission also to sections 5 and 6, giving the Interstate Commerce Commission power to specify the safety appliances.

(Said document is marked Respondent's Exhibit 1.)

Commissioner Pennypacker: What does the Act say about platforms, if anything?

Mr. Lloyd: It provides that there shall be end sills, and all cars must be equipped with secure sill steps.

Now, under the authority given under this act the Interstate Commerce Commission has issued its order of March 13th, 1911, and I want to call the Commission's attention to page 27 of the order, under the heading of "Passenger Train Cars Without End Platforms." This order includes hand brakes, number and location, and sill steps; and under "Sill Steps" the following appears:

"Number 4. Dimensions: Minimum length of tread ten (10), preferably twelve (12) inches. Minimum cross-sectional area
38 one-half (½) by one and one-half (1½) inches or equivalent, wrought iron or steel. Minimum clear depth eight (8) inches. Location: One (1) near each end on each side not more than twenty-four (24) inches from corner of car to center of tread of sill-step. Outside edge of tread of step shall be not more than two inches inside of face of side of car. Tread shall not be more than twenty-four (24) inches above the top of rail. Manner of application: Steps exceeding eighteen inches in depth shall have an additional tread and be laterally braced. Sill-steps shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets."

Next come "Side handholds." I won't read from that, but it provides for the placing of hand holds, and under the heading of "End handholds" I wish to call the attention of the Commission to the heading "Manner of Application:

"Handholds shall be flush with or project not more than one (1) inch beyond face of end sill. End hand holds shall be securely fastened with bolts or rivets. When marker sockets or brackets are located so that they cannot be conveniently reached from
39 platforms, suitable steps and hand holds shall be provided for men to reach such sockets or brackets."

Commissioner Pennypacker: Mark the paper you have just read, and let me look at it.

(Said paper is marked Respondent's Exhibit 2.)

Mr. Lloyd: I offer in evidence the Act of 1879, or March 3, 1879, the act of Congress found in 20 Statutes, page 358, and I want to

call the Commission's attention to sections three and four, of that act particularly:

"Sec. 3. The postmaster general shall in all cases determine upon what trains and in what manner mail shall be conveyed."

"Sec. 4. That all cars and parts of cars used for the railway mail service shall be in such style, length and character, and furnished in such manner as shall be required by the postmaster general, and shall be constructed, fitted out, maintained, heated and lighted by and at the expense of the railroad company."

I desire to offer in evidence a pamphlet entitled "Information issued by the Second Assistant Postmaster General, relation to the transportation of mails by railroads," and issued by the Government printing office in 1913.

(Marked as Respondent's Exhibit 3.)

Commissioner Pennypacker: Is that issued by the As-
40 sistant Postmaster General?

Mr. Lloyd: Yes, sir, those are the instructions.

Commissioner Pennypacker: And the authority was given by the Postmaster General?

Mr. Lloyd: Yes, sir. This paper also contains instructions of the department concerning the transportation of mails and the construction of mail cars, and I also offer at this time the pamphlet entitled "Specifications for the construction of steel full postal cars," approved March 28, 1912, and revised to March 17, 1915.

(Marked as Respondent's Exhibit 4.)

Taking, now, Exhibit 3, "Information issued by the Second Assistant Postmaster General," I want to call the Commission's attention to the first page, wherein it makes reference to the statutes, a quotation from the Revised Statutes, section 4002. That section provides:

"That the mails shall be conveyed with due frequency and speed; and that sufficient and suitable room, fixtures, and furniture, in a car or apartment properly lighted and warmed, shall be provided for * * * (railway postal clerks) to accompany and distribute the mails."

I would call the Commission's attention to page 9, section 1330, wherein the Act of 1879, March 3rd, 20 Statutes, 358, is quoted, and which reads:

41 "Sec. 1330. All cars or parts of cars used for the railway mail service shall be of such style, length, and character, and furnished in such manner, as shall be required by the postmaster general, and shall be constructed, fitted up, maintained, heated, and lighted by and at the expense of the railroad companies."

I also read from the same page Section 1331, and which quotes from the Act of Congress of March 3, 1911, 36 Statutes, 1335. That section is as follows:

"Sec. 1331. After the first of July, nineteen hundred and eleven, no pay shall be allowed for the use of any wooden full railway post-

office car unless constructed substantially in accordance with the most approved plans and specifications of the post office department for such type of cars, nor for any wooden full railway postoffice car run in any train between adjoining steel cars or between the engine and a steel car adjoining, and that hereafter additional cars accepted for this service shall be of steel, or with steel underframe, if used in a train in which a majority of the cars are of like construction; provided, further, that after the first of July, nineteen hundred and sixteen, the postmaster general shall not approve or allow to be used or pay for any full railway postoffice car not constructed of steel or with steel underframe, if such postoffice
42 car is used in a train in which a majority of the cars are of steel or of steel underframe construction."

And I read also Section 1332, as follows:

"Section 1332. After the first of July, nineteen hundred and seventeen, the postmaster general shall not approve or allow to be used or pay for any full railway postoffice car not constructed of steel or steel underframe or equally indestructible material, and not less than twenty-five per centum of the railway postoffice cars of a railroad company not conforming to the provisions of this act shall be replaced with cars constructed of steel annually after June, nineteen hundred and thirteen; and all cars accepted for this service and contracted for by the railroad companies after the passage of this act shall be constructed of steel."

On page 12 the following instruction is issued:

"5. All postal cars shall be built upon plans and specifications furnished by the general superintendent of railway mail service, and such cars shall be subject to inspection before being accepted by the department.

On the same page appears the original specifications for the mail cars. On page 14, section 2 of the specifications, entitled
43 "Reconstruction of full and apartment railway postoffice cars," appears, and the first paragraph reads as follows:

"(a) Full cars may be rebuilt into apartment cars, but no wooden cars not accepted for full railway postoffice car service prior to the passage of the act of August 24, 1912, may be rebuilt for service as a wooden full car, nor will it be permitted to apply steel underframes to existing wooden full railway postoffice cars except as subject to the provisions of a ruling by the second assistant postmaster general under date of February 5, 1913."

On page 16 appears the rule for inspection:

"(a) New full apartment cars should be inspected twice and where possible three times during course of construction.

(b) First inspection should be made when underframe is complete and body framing in place, but before floor is laid or inside sheathing applied.

(c) Second inspection should be made while insulation is being applied and floor is being laid.

(d) Third and final inspection should be made when car is ready for delivery.

(e) Full report covering all inspections should be made on proper forms.

(f) A certificate, Form 5292, from railway companies, is required for all new full and apartment cars and all cars to which steel
44 underframes are applied before such cars can be accepted for service. These certificates are to be sent through division superintendents of railway mail service, who will see that they are received and verified before cars are allowed to be put into service."

I desire to call the Commission's attention to the act of Congress of August 24, 1912, which was referred to on page 16 and page 17, under the head of "Section 5—Operation," as follows:

"(a) Steel underframe cars may be operated in connection with steel cars.

(b) Wooden full or apartment cars must not be operated between adjoining steel or steel underframe cars, or between such cars adjoining and the engine.

(c) In the full railway postoffice car service all wooden cars must be constructed substantially in accordance with the department's plan No. 1 for wooden cars. Additional wooden full cars accepted for the service since March 4, 1911, shall not be operated in a train in which a majority of the cars are of steel or steel underframe construction (this has reference to wooden cars which have not been accepted on or prior to March 4, 1911).

On page 20 the act of Congress of March 3, 1879, is again quoted, and it provides:

45 (Sec. 1386. The postmaster general shall, in all cases, decide upon what trains and in what manner the mails shall be conveyed."

Section 4000, Revised Statutes, provides: "(Sec. 1337) Every railway company carrying the mail shall carry on any train which may run over its road, and without extra charge therefor, all mailable matter directed to be carried thereon, with the person in charge of the same."

The act of 1884, July 5, 23 Statutes, 156, provides:

"(Sec. 1338. * * * If any railroad company shall — or refuse to transport the mails, when required by the postoffice department, upon the fastest train or trains run upon said road, said company shall have its pay reduced fifty per centum of the amount provided by law."

On page 21, the following requirement appears:

"3. The specific requirements of the service as to due frequency and speed, space required on trains or at stations, fixtures, furniture, etc., shall be determined by the postoffice department and made known through the general superintendent of railway mail service."

On page 34, section 12 provides:

"12. Trains which the department regards as being of
46 special importance as mail trains will be subject to deductions for failure to arrive at junction and terminal points at the time fixed by schedule unless held for mail connections, or unless satisfactory explanation be given in due time."

Under the head of "Fines," on the same page, it is provided that the postmaster general may impose fines for delayed trains.

On page 37, the act of May 27, 1908, is referred to, which

"Requires all inspectors employed by the Interstate Commerce Commission for the enforcement of the act of March 2, 1893, (27 Stat. 531), entitled an 'Act to promote the safety of employees and travelers upon railroads,' to make examination of the construction, adaptability, design, and condition of all cars used on any railroad in the United States and make report thereon, a copy of which report shall be transmitted to the postmaster general."

Now, taking Exhibit 4, "Postoffice Department. Specification for the construction of steel full postal cars," I shall call the Commission's attention to section 26, found on page 7 of this Exhibit, setting forth the heating operations.

Commissioner Pennypacker: I want to get at who issued those specifications.

47 Mr. Lloyd: These specifications are signed by A. H. Stephens, general superintendent of railway mail service; Joseph Stewart, second assistant postmaster general; and A. S. Burleson, postmaster general.

Now, section 26, found on page 8, covers the heating of these cars. Paragraph (a) of that section reads as follows:

"(a) Requirements of the department embody three points: First, sufficient heat to keep the postal car or apartment comfortably warm; second, proper distribution of heat, particularly throughout that part of the car occupied by letter cases and bag racks (care should be taken not to have excess of heat around letter case), and third, an arrangement of pipes to avoid interference with distributing facilities."

Then follows a detailed description of the heating arrangements. Section 28, under the head of "Vestibules," appears on page 8, and the paragraph reads:

"Postal cars are to be equipped with the railway company's standard short vestibule, preferably with outside buffer springs, and with diaphragms when needed for communicating between cars."

Section 32, found on page 9, of the specifications, provides:

"The details of the steps, handholds, and signal brackets
48 to be in accordance with United States safety-appliance and M. C. B. requirements and practice of the railroad for which the cars are built. Side steps to be full width of door opening where possible. Hand-holds to be applied to each side door post. See R. M. S. drawings for detail step construction."

That "R. M. S." means Railroad Mail Service.

Section 28 provides as follows:

"Postal cars are to be equipped with the railway company's standard short vestibule, preferable with outside buffer springs, and with diaphragms when needed for communicating between cars."

I will show by witness that I shall call, that this is the platform prescribed and furnished on this car in question.

Then follows specifications for fixtures on mail cars, for the interior

of the car, but what I have referred to related almost exclusively to the exterior. The whole thing is offered in evidence as Respondent's Exhibit 4.

Now, I desire to offer in evidence some photographs.

Commissioner Pennypacker: Before you leave that; what is there in those acts of Congress, or in the instructions of the postmaster general, or in the specifications, upon which you rely, to show that there should not be platforms to the cars? What provisions do you depend upon?

49 Mr. Lloyd: The congress has told us how we can make up our train. They have told us that a 10-inch platform, which is our standard platform, is the kind which must be furnished on these mail cars. And it has regulated the heating of these cars.

Commissioner Pennypacker: Yes?

Mr. Lloyd: And it has regulated the construction of the vestibule. And it has regulated the location of the brackets and signal markers. It has regulated where the hand holds shall be on these particular cars, so that a man can safely turn the markers.

Commissioner Pennypacker: Those are all provisions for safety, but how do they prevent the platform from being there? You can have handholds with a wider platform, can't you?

Mr. Lloyd: The United States Government says you must have a platform of ten inches, so that the men can haul mail from one car to the other, and this type is what they insist upon our providing; and we will not be allowed to run after a certain date, which has been fixed so as to allow the railroads to change their style of cars. We will not be allowed to run old-style cars.

Commissioner Pennypacker: Your safety provisions there you have complied with, I suppose, but is there anything there that affects the provisions made by the State in the matter of safety?

50 In other words is it exclusive in any way?

Mr. Lloyd: The supreme court has said that when an act of congress is passed on this thing, a state law can not interfere.

Mr. Trinkle: What was this case in New York? Was that a case of conflict between the State hours of employment, and the National act? Was there a conflict?

Mr. Lloyd: That was one of the service companies. The supreme court has had before it the safety appliance acts, in the action of the Southern Railway vs. Railway Commission of Indiana, on 230 U. S. 439, and the safety appliance act of the state was declared unconstitutional.

Mr. Trinkle: That would not prevent the state from enacting a full-crew law.

Mr. Lloyd: When the full-crew law attempted to regulate the construction and appliances of your train? The Congress has expressly regulated those very things.

Mr. Trinkle: Only where there is a conflict.

Mr. Lloyd: No, sir.

Mr. Trinkle: Have you any case where they have made any such holding, except where there was a repugnancy?

Mr. Lloyd: I can quote from the Supreme Court of the United States——

Commissioner Magee: I think we had better get the testimony in and have the argument afterwards.

51 Commissioner Monaghan: Do any of these articles which you have read provide a maximum width of platform?

Mr. Lloyd: I am going to cover that in my brief. Section 28, which I have already read, provides for a 10-inch platform, and I am going to offer a blue-print, or several blue-prints, and they show that in detail.

I ask to have this photograph marked Respondent's Exhibit 5, and I offer it in evidence. It is a photograph of car No. 8627, the car in question.

Mr. Scarlet: This illustrates your contention?

Mr. Lloyd: That is a photograph of the car.

Now, I offer as Respondent's Exhibit 6 another photograph of the same car, which shows the rear end and the location of the hand holds more clearly than the first photograph.

Said photographs marked Respondent's Exhibits 5 and 6 respectively.

Mr. Lloyd: I also offer two more photographs, marked Respondent's Exhibits 7 and 8, respectively, showing the hand-holds, and a man turning the markers on these cars, in the method prescribed by the act of congress.

(Said photographs marked Respondent's Exhibits 7 and 8 respectively.)

52 R. L. KLEINE, having been first duly sworn, was examined and testified as follows:

By Mr. Lloyd:

Q. Now, Mr. Kleine, have you before you the order of the Interstate Commerce Commission of March 13, 1911, which I have offered in evidence?

A. Yes, sir.

Q. Will you turn to that part of the order which refers to the short-end cars?

A. Yes, sir.

Q. Have you got it?

A. Yes, sir.

Q. What page is that?

A. Page 27.

Q. Now will you refer to that and explain more in detail what sill steps are, and what this reference to markers on the next page means?

A. The sill steps are defined in an order of the Commission and it is provided that there shall be four, meaning one on each corner, a loop step composed of ½ by 1½ inch iron. Also, the tread of that step must not be higher than twenty-four inches above the rail.

And from that tread up to the car, not more than eighteen inches without an intermediate step.

Q. This step is an iron loop step, shown in the photograph?

A. Yes, sir.

53 Q. As offered in evidence before this Commission?

A. Yes, sir.

Q. Now, turning to the next page, what is the arrangement for turning the markers on these cars? Would you like to have the photograph before you?

A. If you please. (Taking photograph.) There is a main railing on the end of the car, to conform with the provisions of the Act of March 13, 1911. In addition to that there are hand holds provided, so as to reach the marker sockets, which are located on the corner post of the car, below the hood.

Q. Where are these markers placed?

A. These markers are placed on the corner post of the car below the hood of the car, approximately about five feet, six inches, above the platform end sill.

Q. That is on the rear of the car?

A. They are on the corners of each car.

Q. They are on the corners of each car?

A. Yes, sir.

Q. Those brackets are used for what?

A. Those brackets are used to place—the sockets are located on the car, and the bracket is on the lamp, and the lamp is placed in the socket.

Q. Now, on page 27?

A. The lamp brackets showing there, and each car being equipped in the same manner, although they only use the sockets—or the marker sockets are only used when the car is the rear car.

54 Q. So that those cars are provided for use as a last car of a train by the specifications of the postmaster's department?

A. Yes, sir.

Q. Now, on page 28, the specifications read: "When marker sockets or brackets are located so that they cannot be conveniently reached from platforms, suitable steps and hand holds shall be provided for men to reach such sockets or brackets." These sockets or brackets referred to are the sockets or brackets which you have just described, on the corner of the cars, are they not?

A. Yes, they are.

Q. What was the purpose of the provision: "So that they cannot be conveniently reached"?

A. To provide for the securement and safety of the employee in placing the marker in the socket.

Q. What does it mean by saying that the cars shall be provided with suitable steps and hand holds so that the men can reach the sockets, when they cannot be otherwise conveniently reached?

A. There were some cars which did not have a projecting end sill, and in that case it was necessary to provide a step in order to permit the employee to get to the marker socket.

Q. What is the size and general description of that step?

A. There is a specification of the detailed dimensions of that step in the Government specifications. That step would be placed on the end of the car, leading to the marker.

55 Q. Now just pick up that photograph and show the Commission what you mean.

A. (Taking photograph.) Assuming that there was no projecting end sill here, it would be necessary to place some steps in order to reach towards the marker; that is, for the men to step on this step; and suitable hand holds to get to the marker.

Q. Now what about this step which is provided and which has been passed on by the inspectors in the construction of those cars?

A. In the case of the car before me, which is the Pennsylvania Railroad standard, this is in accordance with the postal laws, and the platform end sill forms that step.

Q. Now, on the cars where there is no end sill, what kind of a step is passed by the inspectors and approved under these regulations?

A. A small cast-iron step, or malleable iron step.

Q. Of what size?

A. About 3 x 2.

Q. Feet, or inches?

A. 3 x 2 inches.

Q. And that is considered a safe place on which to stand in order to turn the markers?

A. Yes, sir.

Q. Under the federal specifications and federal laws on that subject.

A. Yes, sir.

56 By Commissioner Pennypacker: You say "passed by the inspector." What inspector?

A. Passed both by the Government safety appliance inspectors, and also by the postoffice inspectors.

By Mr. Lloyd:

Q. Now, Mr. Kleine, have you before you the photograph of the construction of the steel full postal cars approved by the postoffice department on March 28, 1912, and revised to March 17, 1915?

A. Yes, sir.

Q. I wish you would refer to section 26 of that specification. Just say in your own words what those specifications provide under that section.

A. Under section 26 of the specifications, it provides certain heating requirements; that is, a distribution of the pipes throughout the car, and underneath the postal tables, and along the side of the car, and also in the doorways, in order to furnish suitable heat for that car.

Q. In other words, the whole heating question is covered fully, all that you can comply with it and have complied with those requirements?

A. Yes, sir.

Q. Now, refer to section 28, covering vestibules, and explain what that means.

A. "Section 28. Postal cars are to be equipped with the railway company's standard short vestibule, preferable with outside buffer springs, and with diaphragms when needed for com-
57 municating between cars."

Q. What is the "railroad company's standard vestibule"?

A. The same as shown in the photograph.

Q. I hand you certain blue-prints, which I will ask you to look at. I show you what has been marked for identification as Respondent's Exhibit 9, and ask you what that is?

A. Exhibit 9 is a general plan of the underframe of the M70 cars, which is the same as car No. 8627.

Q. I show you what has been marked as Respondent's Exhibit 10, and ask you what that is?

A. That is a general arrangement of the M70 car, and represents the plan of car No. 8627.

Q. I show you what has been marked as Respondent's Exhibit 11 for identification, and ask you what that is?

A. That is a general plan of the underframe of the M70 cars and represents car No. 8627, as well as the other M70 cars that we have in the service.

Q. Are those plans of the standard car of the Pennsylvania Railroad?

A. Yes, sir.

Q. Is the car No. 8627, about which this complaint has been filed, a standard-built mail car?

A. Yes, sir.

Q. Built in accordance with the specifications which have been offered in evidence?

58 A. Yes, sir.

Q. Will you refer to section 32 of the specifications issued by the postoffice department, and just explain what that section provides?

A. "Section 32. Steps, handholds, signal brackets.—The details of the steps, handholds, and signal brackets to be in accordance with United States safety-appliance and M. C. B. requirements and the practice of the railroad for which the cars are built? Now that portion of the specification refers to the United States safety appliances, and M. C. B. requirements. Now, the M. C. B. requirements for safety appliances is precisely the same as the United States safety appliance standard contained in the act of March 3, 1911.

Q. Then, if I understand you correctly, the specifications of the postoffice department include and make part of these specifications the specifications contained in the order of the Interstate Commerce Commission of March 13, 1911?

A. Yes, sir.

Q. Which specifications were prepared under the authority of the federal act of March 1910, entitled "An Act to promote the safety of employes and travelers upon railroads, by compelling common

carriers engaged in interstate commerce to equip their cars with automatic couplers, etc."

A. Yes, sir.

By Commissioner Pennypacker:

Q. You are sure of that, are you?

59 A. Sir?

Q. I say, you are sure of your last answer, are you?

A. Yes, sir.

Q. I was wondering how you learned that the Interstate Commerce Commission was acting under an act of congress. Did you get your information from them, or how did you receive it?

A. Why, simply from the order of the commission, which the commission issues, by which we are governed.

By Mr. Lloyd:

Q. Mr. Kleine, there is just one more question: What is the width of this platform provided on these blue-prints and specifications, and which are actually on car No. 8627?

A. Ten inches in the clear.

Q. Did I ask you what your business with the railroad company was?

A. No, sir.

Q. You are employed by the Pennsylvania Railroad?

A. I am.

Q. In what capacity?

A. General car inspector.

Q. And what do your duties cover?

A. The supervision of repairs and inspection of freight and passenger equipment and cars.

Q. Including mail cars?

60 A. Including mail cars.

Cross-examination.

By Mr. Scarlet:

Q. What specifications do you refer to, controlling the width of the platform upon postal cars? Refer now to any of the specifications, to which your attention had been called, fixing the width of the platform. Not the sill, but the platform.

A. Section 28.

Q. Well, read section 28.

A. "Postal cars are to be equipped with the railway company's standard short vestibule, preferably with outside buffer springs, and with diaphragms when needed for communicating between cars."

Q. A vestibule is not a platform, is it?

A. No, sir, but a short vestibule car——

Q. That is right. Now, the vestibule extends out over the 10-inch sill, does it not?

A. The vestibule does, yes, sir.

Q. One turning a marker has to get out, and get around the vestibule, and put his foot upon a 10-inch sill, and turn the marker, does he not?

A. One foot; yes, sir.

Q. There is no platform there at all, is there?

A. Yes, sir.

Q. What is it?

A. The 10-inch platform.

61 Q. The 10-inch sill on the platform? Is there any specification regulating the platform at all?

A. Yes, sir.

Q. Well, is that inferred, or does it state "platform"?

A. It states "platform."

Q. Where? Turn to the specifications that specify the use of the word "platform."

A. On page 28, of the order of the Interstate Commerce Commission, of March 13, 1911, it refers to it, under "End-Handrails: (On cars with projecting end-sills)."

Q. Yes?

A. But you are actually referred back to page 27.

Q. Now, stop at "end sill." So your end sill is this 10-inch platform, as equipped, is it?

A. I beg your pardon, I am not quite clear. I want to go to another reference, for that actually goes back to page 7.

Q. I cannot refer to it. If you can, turn to it.

A. Page 7, of the United States safety appliance standards, under "Horizontal end-handholds." It says "On each end of cars with platform end-sills six (6) inches or more in width."

Q. Now, that refers to the platform end sill alone, does it not?

A. As the platform end sill.

Q. And does it speak of the platform in the center, or

62 any way excepting as a platform end sill?

A. Platform end sill; that is correct, yes, sir.

By Commissioner Mohaghan:

Q. You mean the maximum face of the sill?

A. Six inches.

Q. Maximum or minimum?

A. That is the minimum.

By Mr. Scarlet:

Q. Is there any maximum width fixed for it?

A. There is a maximum width fixed for it.

By Commissioner Pennypacker:

Q. That is not the maximum of it. "Six or more inches." That means more than six inches. That may be seventeen feet.

A. Yes, your Honor, that is correct.

Mr. Scarlet: That is all. That is our case.

Commissioner Monaghan: Anything further?

Mr. Scarlet: Nothing further.

Commissioner Monaghan: Will you argue the matter?

Mr. Scarlet: Yes, sir.

Mr. Lloyd: I merely want to add that congress has fully covered this matter, and under the decisions of the Supreme Court, which I would like to cite in a written brief, or printed brief, the state Act is absolutely null and void.

Mr. Trinkle: On that point, Mr. Lloyd, the Pennsylvania Railroad filed a bill in equity some time ago, to have the pro-
63 visions of the full crew law declared null and void, and that very section of that Act was attacked. The Supreme Court of Pennsylvania held it valid, and, as I recall it, on this very ground of attack; that this section 7 that you are now relying on, was one of the grounds of attack in that contested case.

Mr. Lloyd: I took no part in that case. I have read the opinion of the Supreme Court of Pennsylvania with considerable care, and I gather from that, that the only constitutional question raised under section 7 was that the title was not sufficiently broad to cover it.

Mr. Trinkle: Did you read the books?

Mr. Lloyd: I read the books hurriedly. I did not see any reference to any testimony as to federal legislation on this subject.

Commissioner Pennypacker: I confess to considerable difficulty, and when you come to write your brief, I shall be pleased to have you indicate your line of thought upon that subject. It is a very important one, I think, as to what would be the duty of the Commission, provided there was a conflict between the act of Congress, or the decision of the Supreme Court, and the act of the Assembly, which creates this Commission. If we have to decide questions of law, that makes the commissioner wiser than the legislature which created it. Is it not our duty to assume that that act is really the law, and if it be otherwise, to let somebody else determine
64 it?

Mr. Trinkle: I think the Supreme Court of Missouri has passed on that very question, and in a very recent decision of the Supreme Court of Missouri they held that that would be beyond the authority of the state commission to declare any part of the act unconstitutional.

Commissioner Pennypacker: The Supreme Court decision is the decision of another jurisdiction. If our Supreme Court had decided the same thing that was determined by the Supreme Court of the United States, we would be bound to follow it, and the position would be somewhat different,

Mr. Lloyd: In answer to that question, I can say that I see this course open to the Commission: that they could find, as a fact, that congress had acted, and had regulated. Then if that is true, the Supreme Court has said that the state law is entirely void and entirely superseded.

Commissioner Pennypacker: The Supreme Court of the United States, for this purpose, is a foreign jurisdiction, and here we have

legislation of our own commonwealth which says otherwise. Now, what is the Commission to do?

Mr. Lloyd: We are subject to the laws of the United States under the Constitution.

Commissioner Pennypacker: To some extent, we are; yes, sir.

65 Mr. Lloyd: We feel that we are to a pretty large extent, sometimes much to our annoyance.

Commissioner Pennypacker: There might be greater power in a higher jurisdiction, but that does not determine the law. I take it that there are many things that the United States can legislate upon.

Mr. Bergner: As I understand this complaint, it is a complaint and a petition to this Commission to construe this law. This is a petition, if it is anything, it is a petition for advice as to whether the Pennsylvania Railroad Company in this particular violated the law, and if they did there is nothing for this Commission to do but to interpret the law. That is the issue before the Commission. We are bound to meet it in the way we have, and if that be so, then it is certainly your duty to examine into the law and determine it as a legal question, because that is what is submitted to you, if you take jurisdiction.

Commissioner Pennypacker: Suppose this Commission, performing the duty which you have suggested, and interpreting this statute, and finding that the statute provides, if it shall so find, that the platform is to be there; then what is the Commission to do?

Mr. Bergner: Part of the duty of the Commission, if it is to interpret the law, is to determine not only what the law says, but whether it is the law, and if it be a fact, as stated, that the case in the Supreme Court of the state is one respecting the insolvent act——

66 Commissioner Pennypacker: I would feel more comfortable over it if counsel could find a decision of our state.

Mr. Bergner: You take the insolvent law of the state of Pennsylvania; that was passed about the time, or shortly after the passage of the national bankrupt act. That act of the Assembly was litigated back and forth in court, and the supreme court, I think Mr. Justice Stewart, said distinctly that the insolvent law of Pennsylvania was superseded or set aside by the national bankrupt act, not because the national bankrupt act fully covered all the provisions of the insolvent law, or because the insolvent law fully covered all the provisions of the bankrupt act, that brought it into conflict, but that the United States had legislated upon the general subject of insolvency, and therefore the provision, or any act of the legislature would be in conflict with the rule laid down by the United States legislation, and therefore the state legislation must fall, or as he used the expression, "be suspended so long as the national bankrupt act was in force."

So here is now the obligation now presented to your honorable body, an obligation, because the court says that your are to consider the law, and we say to you that if you are to consider the law, you

are to determine in your consideration whether it is the law at all or not. And we say it is not the law at all, because the general
67 subject of section 7 of this Full Crew Act has been fully legislated upon by congress, and therefore, under both the United States decisions and the Pennsylvania decisions, the 7th section of the Full Crew Law is suspended.

Commissioner Pennypacker: And the commission is authorized to comm.. suicide.

Mr. Bergner: No, not authorized; it always has that power.

Commissioner Pennypacker: Well, we have had enough indicating the line of thought that we desired.

Mr. Scarlet: I have no doubt that the gentlemen would be glad if the Commission exercised its power. I do not see any conflict between the position taken by the trainmen and the proposition that is stated by the Pennsylvania Railroad Company. In the first place, this commission is not required to pass upon whether this is the law or not, or whether or not the law states that a platform of this character shall be upon the rear end of a train of this kind.

Now, I find that while the postal authorities, under authority of the act of Congress, have given certain specifications, upon which a car can be built, at no place have they legislated upon the question of a platform at all.

Now when this matter came before the Dauphin county court, or before the supreme court of this state, the supreme court of
68 the state said upon this particular point, and it is supported back all along the line; "Nothing is to be found in the body of the Act of 1911 of which its title does not fairly give clear notice. As to the alleged unconstitutionality of the seventh section, because 'it refers exclusively to the equipment of cars, and not to the proper manning thereof, the title disclosing no other purpose than to promote safety by properly manning trains,'" and says it is not covered by the legislation of congress at all. Merely because congress has specified that a train shall be constructed in a certain particular way, does not prevent them from constructing a train so as to have in view the object of this manning of trains. It is an entirely different act from the act of Congress. The court further said:

"A sufficient answer is found in what the court below said in declining to affirm the plaintiff's tenth request for a legal conclusion; 'We cannot say that the seventh section is unconstitutional for the reasons stated in this point. The seventh section relates to trains composed of United States mail and express cars."

The question would be whether it was to be an express car, as in this case, in the front of the train or in the rear of the train.
69 In this case they put that in the front, and did not put it in the rear. On the subject of a front platform on the train, it is simply a question of their construction and the running of trains; but they contend that, having put their mail cars in the rear, and they being constructed according to the act of Congress, therefore they cannot be said to offend; because they did not put that car on the rear, with a platform upon it. Nowhere in any of the specifications to which we have referred, is there anything said about a plat-

form of an express car, that they had on that particular train; and in this 7th section it refers particularly to the express and mail cars. It is a question of making up their trains for safety. It is what this act refers to, and we therefore contend that congress has not legislated upon it. Neither is the act of congress in conflict with this act of the state, which relates entirely to the safety of the employees on the train, and the making of a train with a mail car on the rear, without a platform, and having express cars in front with a platform, was an evasion of the act. To say that they complied with the act of congress because they see fit to end up their train with a mail car, is an evasion of the fair terms and construction of the act.

Mr. Lloyd: Counsel has misstated what has been testified to here. There was no platform on that train. The express cars do not have platforms.

70 Mr. Scarlet: Well, they ought to have been provided. That is the only answer to that. And there is no regulation there which says that express cars shall not have platforms, or that it shall have sills of a certain size.

Mr. Bergner: It was in the rules of the Interstate Commerce Commission, but no question has been raised about express cars here.

Mr. Scarlet: We will raise it now.

Mr. Bergner: No, it is too late to raise it now.

Mr. Scarlet: The opinion of the Supreme Court further says:

"The seventh section relates to trains composed of United States mail and express cars, upon which are carried in addition to the trainmen, postal clerks and express messengers, who are compelled to be travelers upon such trains. The legislature doubtless had in mind the fact that such trains have very small, if any platforms between the cars, so that there may be, for express and mail purposes, free communication between the cars carried in such trains, and in order that such trains may be properly manned and protected by the trainmen."

And that is the distinction that has been made here. Further:

"Provision has been made for the heating of the trains and for means of exit from a rear platform and steps, so that the trainmen may perform their duties of getting off the trains to examine

71 the running gear and other appliances of the cars, and give necessary signals in case the train is required to stop. Without some way of getting from the car to the ground, a trainman could not perform all his duties and the train would not be properly manned. The section is in our opinion germane to the subject matter of the bill and is not unconstitutional for the reason stated in this request."

Now the only thing they attempt to do is to construct a car according to the specifications, a mail car with a 10-inch sill, in the rear, and they must furnish a platform, or have a separate platform, and then they put upon it a short vestibule which extends beyond that platform, as is shown by the photograph; and the brakeman has to get outside of that vestibule and reach around and get hold of the hand hold. They have an end-sill platform. There is not any legislation by congress upon the question, as to the safety

of trainmen in operating that train, with reference to a rear end platform. They have no legislation upon the subject at all, but they say by attempting to legislate upon a particular part of the construction, that, therefore, they have taken the whole subject matter in hand and that the state of Pennsylvania had no right whatever to legislate upon it. I am free to admit, as any lawyer would, that if they had wholly covered the subject by this legislation, and the Supreme Court had not decided that they had
72 covered it, I would have been free to admit that the federal statute would have ended the matter so far as our side was concerned, and we would not have been calling a ruling on it, and there would not have been a complaint filed with regard to it.

Commissioner Monaghan: Anything further, gentlemen, on this case?

Mr. Lloyd: We will simply file a brief within the time.

Mr. Scarlet: I have a short brief here, but I also will file a brief, as it is an important matter.

Mr. Bergner: Send your brief to us, and we will make a reply and send it to you, and you can reply to that.

Mr. Scarlet: I will do so.

Mr. Bergner: I will ask, I think, with the permission of the Commission, that within 15 days after the hearing, or after the testimony is written out, the complainant shall file a brief, and serve a copy upon the respondent, and 15 days after such service the respondent shall hand its brief to complainant, and file briefs with the commission.

Commissioner Monaghan: I presume you gentlemen will follow that course.

Mr. Scarlet: Yes, I will before that.

Commissioner Monaghan: We shall expect you to comply with the rules.

73 Mr. Bergner: Is that the only brief you are going to file?

Mr. Scarlet: Answer that first, and then I will reply.

Mr. Bergner: If that is the only brief he is going to file, we will make reply to that. If he is going to file another one, we will reply to that.

Testimony closed.

(Reported by Henry F. Jolly.)

74 I, the undersigned, do hereby certify that the foregoing is a true and correct transcript of my stenographic notes, in the proceedings before the Commission, in the within proceeding, in so far as the same was reported by me as indicated therein.

HENRY F. JOLLY.

75 Ex. 1.

36.

[Public No. 133.]

[H. R. 5702.]

(The Public Service Commission of the Commonwealth of Pennsylvania. Cp. Docket No. 489, 1915 (year). Resp. Exhibit No. 1. Hearing held 12/21/15 (Date). H. F. Jolly, Reporter.)

An Act to supplement "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes," and other safety appliance Acts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to every common carrier and every vehicle subject to the Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, commonly known as the "Safety Appliance Acts."

Sec. 2. That on and after July first, nineteen hundred and eleven, it shall be unlawful for any common carrier subject to the provisions of this Act to haul, or permit to be hauled or used on its line any car subject to the provisions of this Act not equipped with appliances provided for in this Act, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders: Provided, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

Sec. 3. That within six months from the passage of this Act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this Act and section four of the Act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this Act by such means as the commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this Act, unless changed by an order

of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this Act: Provided, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this Act. Said commission is hereby given authority, after hearing, to modify or change, and to prescribe the standard height of draw bars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall
76 be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the commission.

Sec. 4. That any common carrier subject to this Act using, hauling, or permitting to be used or hauled on its line, any car subject to the requirements of this Act not equipped as provided in this Act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered as provided in section six of the Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six: Provided, That where any car shall have been properly equipped, as provided in this Act and the other Acts mentioned herein, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by section four of this Act or section six of the Act of March second, eighteen hundred and ninety-three as amended by the Act of April first, eighteen hundred and ninety-six, if such movement is necessary to make such repairs and such repairs can not be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of this Act and the other Acts herein referred to; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain live stock or "perishable" freight.

Sec. 5. That except that, within the limits specified in the pre-

ceding section of this Act, the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in this Act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three; and, except as aforesaid, all of the provisions, powers, duties, requirements, and liabilities of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, shall apply to this Act.

Sec. 6. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this Act, and all powers heretofore granted to said commission are hereby extended to it for the purpose of the enforcement of this Act.

Approved, April 14, 1910.

BEFORE THE

Interstate Commerce Commission.

UNITED STATES SAFETY-APPLIANCE STANDARDS.

March 18, 1911.

ORDER OF THE COMMISSION.

Interstate Commerce Commission.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of March, A. D. 1911.

Present:

JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
CHARLES C. MCCHORD,
BALTHASAR H. MEYER,
} Commissioners.

IN THE MATTER OF THE EXTENSION OF THE PERIOD WITHIN WHICH COMMON CARRIERS SHALL COMPLY WITH THE REQUIREMENTS OF AN ACT ENTITLED, "AN ACT TO SUPPLEMENT 'AN ACT TO PROMOTE THE SAFETY OF EMPLOYEES AND TRAVELERS UPON RAILROADS BY COMPELLING COMMON CARRIERS ENGAGED IN INTERSTATE COMMERCE TO EQUIP THEIR CARS WITH AUTOMATIC COUPLERS AND CONTINUOUS BRAKES AND THEIR LOCOMOTIVES WITH DRIVING-WHEEL BRAKES AND FOR OTHER PURPOSES,' AND OTHER SAFETY APPLIANCE ACTS, AND FOR OTHER PURPOSES," APPROVED APRIL 14, 1910, AS AMENDED BY "AN ACT MAKING APPROPRIATIONS FOR SUNDRY CIVIL EXPENSES OF THE GOVERNMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1912, AND FOR OTHER PURPOSES," APPROVED MARCH 4, 1911.

Whereas, pursuant to the provisions of the act above stated, the Interstate Commerce Commission, by its orders duly made and entered on October 13, 1910, and March 13, 1911, has designated the number, dimensions, location, and manner of application of the appliances provided for by section 2 of the act aforesaid and section 4 of the act of March 2, 1893, as amended April 1, 1896, and March 2, 1903, known as the "Safety Appliance Acts"; and whereas the

matter of extending the period within which common carriers shall comply with the provisions of section 2 of the act first aforesaid being under consideration, upon full hearing and for good cause shown:

It is ordered, That the period of time within which said common carriers shall comply with the provisions of section 3 of said act in respect of the equipment of cars in service on the 1st day of July, 1911, be, and the same is hereby, extended as follows, to wit:

FREIGHT-TRAIN CARS.

(*a*) Carriers are not required to change the brakes from right to left side on steel or steel-underframe cars with platform end sills, or to change the end ladders on such cars, except when such appliances are renewed, at which time they must be made to comply with the standards prescribed in said order of March 13, 1911.

(*b*) Carriers are granted an extension of five years from July 1, 1911, to change the location of brakes on all cars other than those designated in paragraph (*a*) to comply with the standards prescribed in said order.

(*c*) Carriers are granted an extention of five years from July 1, 1911, to comply with the standards prescribed in said order in respect of all brake specifications contained therein, other than those designated in paragraphs (*a*) and (*b*), on cars of all classes.

(*d*) Carriers are not required to make changes to secure additional end-ladder clearance on cars that have 10 or more inches end-ladder clearance, within 30 inches of side of car, until car is shopped for work amounting to practically rebuilding body of car, at which time they must be made to comply with the standards prescribed in said order.

(*e*) Carriers are granted an extension of five years from July 1, 1911, to change cars having less than 10 inches end-ladder clearance, within 30 inches of side of car, to comply with the standards prescribed in said order.

(*f*) Carriers are granted an extension of five years from July 1, 1911, to change and apply all other appliances on freight-train cars to comply with the standards prescribed in said order, except that when a car is shopped for work amounting to practically rebuilding body of car, it must then be equipped according to the standards prescribed in said order in respect to handholds, running boards, ladders, sill steps, and brake staffs: *Provided*, That the extension of time herein granted is not to be construed as relieving carriers from complying with the provisions of section 4 of the act of March 2, 1893, as amended April 1, 1896, and March 2, 1903.

(*g*) Carriers are not required to change the location of handholds (except end handholds under end sills), ladders, sill steps, brake wheels, and brake staffs on freight-train cars where the appliances

are within 3 inches of the required location, except that when cars undergo regular repairs they must then be made to comply with the standards prescribed in said order.

PASSENGER-TRAIN CARS.

(*h*) Carriers are granted an extension of three years from July 1, 1911, to change passenger-train cars to comply with the standards prescribed in said order.

LOCOMOTIVES, SWITCHING.

(*i*) Carriers are granted an extension of one year from July 1, 1911, to change switching locomotives to comply with the standards prescribed in said order.

LOCOMOTIVES, OTHER THAN SWITCHING.

(*j*) Carriers are granted an extension of two years from July 1, 1911, to change all locomotives of other classes to comply with the standards prescribed in said order.

A true copy.

Edw. A. Moseley

Secretary.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of March, A. D. 1911.

Present:

JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
CHARLES C. MCCHORD,
BALTHASAR H. MEYER,
} Commissioners.

IN THE MATTER OF DESIGNATING THE NUMBER, DIMENSIONS, LOCATION, AND MANNER OF APPLICATION OF CERTAIN SAFETY APPLIANCES.

Whereas by the third section of an act of Congress approved April 14, 1910, entitled "An act to supplement 'An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' and other safety appliance acts, and for other purposes," it is provided, among other things, "That within six months from the passage of this act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this act and section four of the act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this act by such means as the Commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this act, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to com-

ply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this act: *Provided*, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this act;" and

Whereas hearings in the matter of the number, dimensions, location, and manner of application of the appliances, as provided in said section of said act, were held before the Interstate Commerce Commission at its office in Washington, D. C., on September 29th and 30th and October 7th, 1910, respectively; and February 27th, 1911;

Now, therefore, in pursuance of and in accordance with the provisions of said section three of said act, and superseding the Commission's order of October 13, 1910, relative thereto

It is ordered, That the number, dimensions, location, and manner of application of the appliances provided for by section two of the act of April 14, 1910, and section four of the act of March 2, 1893, shall be as follows:

BOX AND OTHER HOUSE CARS.

HAND-BRAKES:

NUMBER: Each box or other house car shall be equipped with an efficient hand-brake which shall operate in harmony with the power-brake thereon.

The hand-brake may be of any efficient design, but must provide the same degree of safety as the design shown on Plate A.

DIMENSIONS: The brake-shaft shall be not less than one and one-fourth (1¼) inches in diameter, of wrought iron or steel without weld.

The brake-wheel may be flat or dished, not less than fifteen (15), preferably sixteen (16), inches in diameter, of malleable iron, wrought iron or steel.

LOCATION: The hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car, to the left of and not less than seventeen (17) nor more than twenty-two (22) inches from center.

MANNER OF APPLICATION: There shall be not less than four (4) inches clearance around rim of brake-wheel.

Outside edge of brake-wheel shall be not less than four (4) inches from a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill.

Top brake-shaft support shall be fastened with not less than one-half (½) inch bolts or rivets. (See Plate A.)

A brake-shaft step shall support the lower end of brake-shaft. A brake-shaft step which will permit the brake-chain to drop under the brake-shaft shall not be used. U-shaped form of brake-shaft step is preferred. (See Plate A.)

Brake-shaft shall be arranged with a square fit at its upper end to secure the hand-brake wheel; said square fit shall be not less than seven-eighths (⅞) of an inch square. Square-fit taper; nominally two (2) in twelve (12) inches. (See Plate A.)

Brake-chain shall be of not less than three-eighths (⅜), preferably seven-sixteenths (7/16), inch wrought iron or steel, with a link on the brake-rod end of not less than seven-sixteenths (7/16), preferably one-half (½), inch wrought iron or steel, and shall be secured to brake-shaft drum by not less than one-half (½) inch hexagon or square-headed bolt. Nut on said bolt shall be secured by riveting end of bolt over nut. (See Plate A.)

Lower end of brake-shaft shall be provided with a trunnion of not less than three-fourths (¾), preferably one (1), inch in diameter extending through brake-shaft step and held in operating position by a suitable cotter or ring. (See Plate A.)

Brake-shaft drum shall be not less than one and one-half (1½) inches in diameter. (See Plate A.)

Brake ratchet-wheel shall be secured to brake-shaft by a key or square fit; said square fit shall be not less than one and five-sixteenths (1 5/16) inches square. When ratchet-wheel with square fit is used provision shall be made to prevent ratchet-wheel from rising on shaft to disengage brake-pawl. (See Plate A.)

Brake ratchet-wheel shall be not less than five and one-fourth (5¼), preferably five and one-half (5½), inches in diameter and shall have not less than fourteen (14), preferably sixteen (16), teeth. (See Plate A.)

If brake ratchet-wheel is more than thirty-six (36) inches from brake-wheel, a brake-shaft support shall be provided to support this extended upper portion of brake-shaft; said brake-shaft support shall be fastened with not less than one-half (½) inch bolts or rivets.

The brake-pawl shall be pivoted upon a bolt or rivet not less than five-eighths (⅝) of an inch in diameter, or upon a trunnion secured by not less than one-half (½) inch bolt or rivet, and there shall be a rigid metal connection between brake-shaft and pivot of pawl.

Brake-wheel shall be held in position on brake-shaft by a nut on a threaded extended end of brake-shaft; said threaded portion shall be not less than three-fourths (¾) of an inch in diameter; said nut shall be secured by riveting over or by the use of a lock-nut or suitable cotter.

Brake-wheel shall be arranged with a square fit for brake-shaft in hub of said wheel; taper of said fit, nominally two (2) in twelve (12) inches. (See Plate A.)

BRAKE-STEP: If brake-step is used, it shall be not less than twenty-eight (28) inches in length. Outside edge shall be not less than eight (8) inches from face of car and not less than four (4) inches from a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill.

MANNER OF APPLICATION: Brake-step shall be supported by not less than two metal braces having a minimum cross-sectional area three-eighths (⅜) by one and one-half (1½) inches or equivalent, which shall be securely fastened to body of car with not less than one-half (½) inch bolts or rivets.

RUNNING-BOARDS:

NUMBER: One (1) longitudinal running-board.
On outside-metal-roof cars two (2) latitudinal extensions.

DIMENSIONS: Longitudinal running-board shall be not less than eighteen (18), preferably twenty (20), inches in width.
Latitudinal extensions shall be not less than twenty-four (24) inches in width.

LOCATION: Full length of car, center of roof.
On outside-metal-roof cars there shall be two (2) latitudinal extensions from longitudinal running-board to ladder locations, except on refrigerator cars where such latitudinal extensions can not be applied on account of ice hatches.

MANNER OF APPLICATION: Running-boards shall be continuous from end to end and not cut or hinged at any point: *Provided*, That the length and width of running-boards may be made up of a number of pieces securely fastened to saddle-blocks with screws or bolts.
The ends of longitudinal running-board shall be not less than six (6) nor more than ten (10) inches from a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill; and if more than four (4) inches from edge of roof of car, shall be securely supported their full width by substantial metal braces.
Running-boards shall be made of wood and securely fastened to car.

SILL-STEPS:

NUMBER: Four (4).

DIMENSIONS: Minimum cross-sectional area one-half (½) by one and one-half (1½) inches, or equivalent, of wrought iron or steel.
Minimum length of tread, ten (10), preferably twelve (12), inches.
Minimum clear depth, eight (8) inches.

LOCATION: One (1) near each end on each side of car, so that there shall be not more than eighteen (18) inches from end of car to center of tread of sill-step.

Outside edge of tread of step shall be not more than four (4) inches inside of face of side of car, preferably flush with side of car.

Tread shall be not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

MANNER OF APPLICATION: Sill-steps exceeding twenty-one (21) inches in depth shall have an additional tread.

Sill-steps shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

LADDERS:

NUMBER: Four (4).

DIMENSIONS: Minimum clear length of tread: Side ladders sixteen (16) inches; end ladders fourteen (14) inches.

Maximum spacing between ladder-treads, nineteen (19) inches.

Top ladder-tread shall be located not less than twelve (12) nor more than eighteen (18) inches from roof at eaves.

Spacing of side ladder treads shall be uniform within a limit of two (2) inches from top ladder tread to bottom tread of ladder.

Maximum distance from bottom tread of side ladder to top tread of sill step, twenty-one (21) inches.

End ladder treads shall be spaced to coincide with treads of side ladders, a variation of two (2) inches being allowed. Where construction of car will not permit the application of a tread of end ladder to coincide with bottom tread of side ladder, the bottom tread of end ladder must coincide with second tread from bottom of side ladder.

Hard-wood treads, minimum dimensions one and one-half (1½) by two (2) inches.

Iron or steel treads, minimum diameter five-eighths (⅝) of an inch.

Minimum clearance of treads, two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) on each side, not more than eight (8) inches from right end of car; one (1) on each end, not more than eight (8) inches from left side of car; measured from inside edge of ladder-stile or clearance of ladder treads to corner of car.

MANNER OF APPLICATION: Metal ladders without stiles near corners of cars shall have foot guards or upward projections not less than two (2) inches in height near inside end of bottom treads.

Stiles of ladders, projecting two (2) or more inches from face of car, will serve as foot-guards.

Ladders shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets. Three-eighths (⅜) inch bolts may be used for wooden treads which are gained into stiles.

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel, brake-step, running-board or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

ROOF-HANDHOLDS:

NUMBER: One (1) over each ladder.

One (1) right-angle handhold may take the place of two (2) adjacent specified roof-handholds, provided the dimensions and locations coincide, and that an extra leg is securely fastened to car at point of angle.

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches.

Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: On roof of car: One (1) parallel to treads of each ladder, not less than eight (8) nor more than fifteen (15) inches from edge of roof, *except* on refrigerator cars where ice hatches prevent, when location may be nearer edge of roof.

MANNER OF APPLICATION: Roof-handholds shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

SIDE-HANDHOLDS:

NUMBER: Four (4).

[*Tread of side-ladder is a side-handhold.*]

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches, preferably twenty-four (24) inches.

Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: Horizontal: One (1) near each end on each side of car.

Side-handholds shall be not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, *except* as provided above, where tread of ladder is a handhold. Clearance of outer end of handhold shall be not more than eight (8) inches from end of car.

MANNER OF APPLICATION: Side-handholds shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

HORIZONTAL END-HANDHOLDS:

NUMBER: Eight (8) or more. (Four (4) on each end of car.)
[*Tread of end-ladder is an end-handhold.*]

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clear length, sixteen (16) inches, preferably twenty-four (24) inches.
A handhold fourteen (14) inches in length may be used where it is impossible to use one sixteen (16) inches in length.
Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) near each side on each end of car, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, *except* as provided above, when tread of end-ladder is an end-handhold. Clearance of outer end of handhold shall be not more than eight (8) inches from side of car.
One (1) near each side of each end of car on face of end-sill or sheathing over end-sill, projecting outward or downward. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.
On each end of cars with platform end-sills six (6) or more inches in width, measured from end-post or siding and extending entirely across end of car, there shall be one additional end-handhold not less than twenty-four (24) inches in length, located near center of car, not less than thirty (30) nor more than sixty (60) inches above platform end-sill.

MANNER OF APPLICATION: Horizontal end-handholds shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

VERTICAL END-HANDHOLDS:

NUMBER: Two (2) on full-width platform end-sill cars, as heretofore described.

DIMENSIONS: Minimum diameter five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clear length, eighteen (18), preferably twenty-four (24), inches.
Minimum clearance two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) on each end of car opposite ladder, not more than eight (8) inches from side of car; clearance of bottom end of handhold shall be not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler.

MANNER OF APPLICATION: Vertical end-handholds shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

UNCOUPLING-LEVERS:

NUMBER: Two (2).

Uncoupling-levers may be either single or double, and of any efficient design.

DIMENSIONS: Handles of uncoupling-levers, *except* those shown on Plate B or of similar designs, shall be not more than six (6) inches from sides of car.

Uncoupling-levers of design shown on Plate B and of similar designs shall conform to the following-prescribed limits:

Handles shall be not more than twelve (12), preferably nine (9), inches from sides of cars. Center lift-arms shall be not less than seven (7) inches long.

Center of eye at end of center lift-arm shall be not more than three and one-half (3½) inches beyond center of eye of uncoupling-pin of coupler when horn of coupler is against the buffer-block or end-sill. (See Plate B.)

Ends of handles shall extend not less than four (4) inches below bottom of end-sill or shall be so constructed as to give a minimum clearance of two (2) inches around handle. Minimum drop of handles shall be twelve (12) inches; maximum, fifteen (15) inches over all. (See Plate B.)

Handles of uncoupling-levers of the "rocking" or "push-down" type shall be not less than eighteen (18) inches from top of rail when lock-block has released knuckle, and a suitable stop shall be provided to prevent inside arm from flying up in case of breakage.

LOCATION: One (1) on each end of car.

When single lever is used it shall be placed on left side of end of car.

HOPPER CARS AND HIGH-SIDE GONDOLAS WITH FIXED ENDS.

[*Cars with sides more than thirty-six (36) inches above the floor are high-side cars.*]

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of, and not more than twenty-two (22) inches from, center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

BRAKE-STEP: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

LADDERS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars," *except* that top ladder-tread shall be located not more than four (4) inches from top of car.

LOCATION: Same as specified for "Box and other house cars."

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS: Same as specified for "Box and other house cars."

HORIZONTAL END-HANDHOLDS: Same as specified for "Box and other house cars."

VERTICAL END-HANDHOLDS: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel, brake-step or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

DROP-END HIGH-SIDE GONDOLA CARS.

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

LADDERS:

NUMBER: Two (2).

DIMENSIONS: Same as specified for "Box and other house cars," *except* that top ladder-tread shall be located not more than four (4) inches from top of car.

LOCATION: One (1) on each side, not more than eight (8) inches from right end of car, measured from inside edge of ladder-stile or clearance of ladder-treads to corner of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS: Same as specified for "Box and other house cars."

HORIZONTAL END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

FIXED-END LOW-SIDE GONDOLA AND LOW-SIDE HOPPER CARS.

[*Cars with sides thirty-six (36) inches or less above the floor are low-side cars.*]

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car, to the left of and not more than twenty-two (22) inches from center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

BRAKE-STEP: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each end on each side of car, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, if car construction will permit, but handhold shall not project above top of side. Clearance of outer end of handhold shall be not more than eight (8) inches from end of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

HORIZONTAL END-HANDHOLDS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS Same as specified for "Box and other house cars."

LOCATION: One (1) near each side on each end of car not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, if car construction will permit. Clearance of outer end of handhold shall be not more than eight (8) inches from side of car.

One (1) near each side of each end of car on face of end sill, projecting outward or downward. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-step, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

DROP-END LOW-SIDE GONDOLA CARS.

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars," provided that top brake shaft support may be omitted.

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each end on each side of car, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, if car construction will permit, but handhold shall not project above top of side. Clearance of outer end of handhold shall be not more than eight (8) inches from end of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each side of each end of car on face of end sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

FLAT CARS.

[*Cars with sides twelve (12) inches or less above the floor may be equipped the same as flat cars.*]

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on the end of car to the left of center, or on side of car not more than thirty-six (36) inches from right-hand end thereof.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) on face of each side-sill near each end. Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

TANK-CARS WITH SIDE-PLATFORMS.

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

NUMBER: Four (4) or more.

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) on face of each side-sill near each end. Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.

If side safety-railings are attached to tank or tank-bands, four (4) additional vertical handholds shall be applied, one (1) as nearly as possible over each sill-step and securely fastened to tank or tank-band.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

TANK-HEAD HANDHOLDS:

NUMBER: Two (2). [*Not required if safety-railing runs around ends of tank.*]

DIMENSIONS: Minimum diameter five-eighths (⅝) of an inch, wrought iron or steel. Minimum clearance two (2), preferably two and one-half (2½), inches. Clear length of handholds shall extend to within six (6) inches of outer diameter of tank at point of application.

LOCATION: Horizontal: One (1) across each head of tank not less than thirty (30) nor more than sixty (60) inches above platform.

MANNER OF APPLICATION: Tank-head handholds shall be securely fastened.

SAFETY-RAILINGS:

NUMBER: One (1) continuous safety-railing running around sides and ends of tank, securely fastened to tank or tank-bands at ends and sides of tank; or two (2) running full length of tank at sides of car supported by posts.

DIMENSIONS: Not less than three-fourths (¾) of an inch, iron.

LOCATION: Running full length of tank either at side supported by posts or securely fastened to tank or tank-bands, not less than thirty (30) nor more than sixty (60) inches above platform.

MANNER OF APPLICATION: Safety-railings shall be securely fastened to tank-body, tank-bands or posts.

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-shaft brackets, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

TANK CARS WITHOUT SIDE-SILLS AND TANK CARS WITH SHORT SIDE-SILLS AND END-PLATFORMS.

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

NUMBER: One (1) continuous running-board around sides and ends; or two (2) running full length of tank, one (1) on each side.

DIMENSIONS: Minimum width on sides, ten (10) inches.
Minimum width on ends, six (6) inches.

LOCATION: Continuous around sides and ends of cars. On tank cars having end platforms extending to bolsters, running-boards shall extend from center to center of bolsters, one (1) on each side.

MANNER OF APPLICATION: If side running-boards are applied below center of tank, outside edge of running-boards shall extend not less than seven (7) inches beyond bulge of tank.

The running-boards at ends of car shall be not less than six (6) inches from a point vertically above the inside face of knuckle when closed with coupler-horn against the buffer-block, end-sill or back-stop.

Running-boards shall be securely fastened to tank or tank-bands.

SILL-STEPS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: One (1) near each end on each side under side-handhold.

Outside edge of tread of step shall be not more than four (4) inches inside of face of side of car, preferably flush with side of car.

Tread shall be not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

LADDERS: [*If running-boards are so located as to make ladders necessary.*]

NUMBER: Two (2) on cars with continuous running-boards.

Four (4) on cars with side running-boards.

DIMENSIONS: Minimum clear length of tread, ten (10) inches.
Maximum spacing of treads, nineteen (19) inches.
Hard-wood treads, minimum dimensions, one and one-half (1½) by two (2) inches.
Wrought iron or steel treads, minimum diameter, five-eighths (⅝) of an inch.
Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: On cars with continuous running-boards, one (1) at right end of each side.
On cars with side running-boards, one (1) at each end of each running-board.

MANNER OF APPLICATION: Ladders shall be securely fastened with not less than one-half (½) inch bolts or rivets.

SIDE-HANDHOLDS:

NUMBER: Four (4) or more.

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) on face of each side-sill near each end on tank cars with short side-sills, or one (1) attached to top of running-board projecting outward above sill-steps or ladders on tank cars without side-sills. Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.
If side safety-railings are attached to tank or tank-bands four (4) additional vertical handholds shall be applied, one (1) as nearly as possible over each sill-step and securely fastened to tank or tank-band.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

TANK-HEAD HANDHOLDS:

NUMBER: Two (2). *[Not required if safety-railing runs around ends of tank.]*

DIMENSIONS: Minimum diameter five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clearance two (2), preferably two and one-half (2½), inches.

LOCATION: Horizontal: One (1) across each head of tank not less than thirty (30) nor more than sixty (60) inches above platform on running-board. Clear length of handholds shall extend to within six (6) inches of outer diameter of tank at point of application.

MANNER OF APPLICATION: Tank-head handholds shall be securely fastened.

SAFETY-RAILINGS:

NUMBER: One (1) running around sides and ends of tank or two (2) running full length of tank.

DIMENSIONS: Minimum diameter, seven-eighths (⅞) of an inch, wrought iron or steel.

Minimum clearance, two and one-half (2½) inches.

LOCATION: Running full length of tank, not less than thirty (30) nor more than sixty (60) inches above platform or running-board.

MANNER OF APPLICATION: Safety-railings shall be securely fastened to tank or tank-bands and secured against end shifting.

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-shaft brackets, brake-wheel, running-boards or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same, above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

TANK CARS WITHOUT END-SILLS.

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion. The brake-shaft shall be located on end of car to the left of center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

BRAKE-STEP: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

NUMBER: One (1).

DIMENSIONS: Minimum width on sides, ten (10) inches.
Minimum width on ends, six (6) inches.

LOCATION: Continuous around sides and ends of tank.

MANNER OF APPLICATION: If running-boards are applied below center of tank, outside edge of running-boards shall extend not less than seven (7) inches beyond bulge of tank.

Running-boards at ends of car shall be not less than six (6) inches from a point vertically above the inside face of knuckle when closed with coupler-horn against the buffer-block, end-sill or back-stop.

Running-boards shall be securely fastened to tank or tank-bands.

SILL-STEPS:

NUMBER: Four (4). [*If tank has high running-boards, making ladders necessary, sill-steps must meet ladder requirements.*]

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: One (1) near each end on each side, flush with outside edge of running-board as near end of car as practicable.

Tread not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

MANNER OF APPLICATION: Steps exceeding eighteen (18) inches in depth shall have an additional tread and be laterally braced.

Sill-steps shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with one-half (½) inch rivets.

SIDE-HANDHOLDS:

NUMBER: Four (4) or more.

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each end on each side of car over sill-step on running-board, not more than two (2) inches back from outside edge of running-board, projecting downward or outward.

Where such side-handholds are more than eighteen (18) inches from end of car, an additional handhold must be placed near each end on each side not more than thirty (30) inches above center line of coupler.

Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.

If safety-railings are on tank, four (4) additional vertical handholds shall be applied, one (1) over each sill-step on tank.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each side on each end of car on running-board, not more than two (2) inches back from edge of running-board projecting downward or outward, or on end of tank not more than thirty (30) inches above center line of coupler.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SAFETY-RAILINGS:

NUMBER: One (1).

DIMENSIONS: Minimum diameter seven-eighths (⅞) of an inch, wrought iron or steel.

Minimum clearance two and one-half (2½) inches.

LOCATION: Safety-railings shall be continuous around sides and ends of car, not less than thirty (30) nor more than sixty (60) inches above running-board.

MANNER OF APPLICATION: Safety-railings shall be securely fastened to tank or tank-bands, and secured against end shifting.

UNCOUPLING-LEVERS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars," *except* that minimum length of uncoupling-lever shall be forty-two (42) inches, measured from center line of end of car to handle of lever.

LOCATION: Same as specified for "Box and other house cars," *except* that uncoupling-lever shall be not more than thirty (30) inches above center line of coupler.

END-LADDER CLEARANCE:

No part of car above buffer-block within thirty (30) inches from side of car, *except* brake-shaft, brake-shaft brackets, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or back-stop, and no other part of end of car or fixtures on same, above buffer-block, other than exceptions herein noted, shall extend beyond the face of buffer-block.

CABOOSE CARS WITH PLATFORMS.

HAND-BRAKES:

NUMBER: Each caboose car shall be equipped with an efficient hand-brake which shall operate in harmony with the power-brake thereon.

The hand-brake may be of any efficient design, but must provide the same degree of safety as the design shown on Plate A.

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft on caboose cars with platforms shall be located on platform to the left of center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

NUMBER: One (1) longitudinal running-board.

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Full length of car, center of roof. [*On caboose cars with cupolas, longitudinal running-boards shall extend from cupola to ends of roof.*]

Outside-metal-roof cars shall have latitudinal extensions leading to ladder locations.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

LADDERS:

NUMBER: Two (2).

DIMENSIONS: None specified.

LOCATION: One (1) on each end.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

ROOF-HANDHOLDS:

NUMBER: One (1) over each ladder.

Where stiles of ladders extend twelve (12) inches or more above roof, no other roof-handholds are required.

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: On roof of caboose, in line with and running parallel to treads of ladder, not less than eight (8) nor more than fifteen (15) inches from edge of roof.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

CUPOLA-HANDHOLDS:

NUMBER: One (1) or more.

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clearance two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) continuous handhold extending around top of cupola not more than three (3) inches from edge of cupola-roof.
Four (4) right-angle handholds, one (1) at each corner, not less than sixteen (16) inches in clear length from point of angle, may take the place of the one (1) continuous handhold specified, if locations coincide.

MANNER OF APPLICATION: Cupola-handholds shall be securely fastened with not less than one-half (½) inch bolts with nuts outside and riveted over or with not less than one-half (½) inch rivets.

SIDE-HANDHOLDS:

NUMBER: Four (4)

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clear length, thirty-six (36) inches.
Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) near each end on each side of car, curving downward toward center of car from a point not less than thirty (30) inches above platform to a point not more than eight (8) inches from bottom of car. Top end of handhold shall be not more than eight (8) inches from outside face of end-sheathing.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each side on each end of car on face of platform end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from end of platform end-sill.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END PLATFORM-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) right-angle handhold on each side of each end extending horizontally from door-post to corner of car at approximate height of platform-rail, then downward to within twelve (12) inches of bottom of car.

MANNER OF APPLICATION: Handholds shall be securely fastened with bolts, screws, or rivets.

CABOOSE PLATFORM-STEPS:

Safe and suitable box steps leading to caboose platforms shall be provided at each corner of caboose.

Lower tread of step shall be not more than twenty-four (24) inches above top of rail.

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

CABOOSE CARS WITHOUT PLATFORMS.

HAND-BRAKES:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft on caboose cars without platforms shall be located on end of car to the left of center.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

BRAKE-STEP: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Full length of car, center of roof. [*On caboose cars with cupolas, longitudinal running-boards shall extend from cupola to ends of roof.*]

Outside-metal-roof cars shall have latitudinal extensions leading to ladder locations.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-DOOR STEPS:

NUMBER: Two (2) [*if caboose has side-doors*].

DIMENSIONS: Minimum length, five (5) feet.
Minimum width, six (6) inches.
Minimum thickness of tread, one and one-half (1½) inches.
Minimum height of back-stop, three (3) inches.
Maximum height from top of rail to top of tread, twenty-four (24) inches.

LOCATION: One (1) under each side-door.

MANNER OF APPLICATION: Side-door steps shall be supported by two (2) iron brackets having a minimum cross-sectional area seven-eighths (⅞) by three (3) inches or equivalent, each of which shall be securely fastened to car by not less than two (2) three-fourth (¾) inch bolts.

LADDERS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Same as specified for "Box and other house cars" *except* when caboose has side doors, then side-ladders shall be located not more than eight (8) inches from doors.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel, brake-step, running-board or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

ROOF-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: One (1) over each ladder, on roof in line with and running parallel to treads of ladder, not less than eight (8) nor more than fifteen (15) inches from edge of roof.
Where stiles of ladders extend twelve (12) inches or more above roof, no other roof-handholds are required.

MANNER OF APPLICATION: Roof-handholds shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

CUPOLA-HANDHOLDS:

NUMBER: One (1) or more.

DIMENSIONS: Minimum diameter five-eighths (⅝) of an inch, wrought iron or steel. Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) continuous cupola-handhold extending around top of cupola, not more than three (3) inches from edge of cupola roof.

Four (4) right-angle handholds, one (1) at each corner, not less than sixteen (16) inches in clear length from point of angle, may take the place of the one (1) continuous handhold specified, if locations coincide.

MANNER OF APPLICATION: Cupola-handhold shall be securely fastened with not less than one-half (½) inch bolts with nuts outside and riveted over or with not less than one-half (½) inch rivets.

SIDE-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each end on each side of car, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler. Clearance of outer end of handhold shall be not more than eight (8) inches from end of car.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

SIDE-DOOR HANDHOLDS:

NUMBER: Four (4): Two (2) curved, two (2) straight.

DIMENSIONS: Minimum diameter five-eighths (⅝) of an inch, wrought iron or steel. Minimum clearance two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) curved handhold, from a point at side of each door opposite ladder, not less than thirty-six (36) inches above bottom of car, curving away from door downward to a point not more than six (6) inches above bottom of car.

One (1) vertical handhold at ladder side of each door from a point not less than thirty-six (36) inches above bottom of car to a point not more than six (6) inches above level of bottom of door.

MANNER OF APPLICATION: Side-door handholds shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

HORIZONTAL END-HANDHOLDS:

NUMBER: Same as specified for "Box and other house cars."

DIMENSIONS: Same as specified for "Box and other house cars."

LOCATION: Same as specified for "Box and other house cars," *except* that one (1) additional end-handhold shall be on each end of cars with platform end-sills as heretofore described, unless car has door in center of end. Said handhold shall be not less than twenty-four (24) inches in length, located near center of car, not less than thirty (30) nor more than sixty (60) inches above platform end-sill.

MANNER OF APPLICATION: Same as specified for "Box and other house cars."

VERTICAL END-HANDHOLDS: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

PASSENGER-TRAIN CARS WITH WIDE VESTIBULES.

HAND-BRAKES:

NUMBER: Each passenger-train car shall be equipped with an efficient hand-brake, which shall operate in harmony with the power-brake thereon.

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

SIDE-HANDHOLDS:

NUMBER: Eight (8).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, metal.
Minimum clear length, sixteen (16) inches.
Minimum clearance, one and one-fourth (1¼), preferably one and one-half (1½), inches.

LOCATION: Vertical: One (1) on each vestibule door post.

MANNER OF APPLICATION: Side-handholds shall be securely fastened with bolts, rivets or screws.

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clear length, sixteen (16) inches.
Minimum clearance, two (2), preferably two and one-half (2½), inches.
Handholds shall be flush with or project not more than one (1) inch beyond vestibule face.

LOCATION: Horizontal: One (1) near each side on each end projecting downward from face of vestibule end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: End-handholds shall be securely fastened with bolts or rivets.

When marker-sockets or brackets are located so that they can not be conveniently reached from platforms, suitable steps and handholds shall be provided for men to reach such sockets or brackets.

UNCOUPLING-LEVERS:

Uncoupling attachments shall be applied so they can be operated by a person standing on the ground.

Minimum length of ground uncoupling attachment, forty-two (42) inches, measured from center line of end of car to handle of attachment.

On passenger-train cars used in freight or mixed-train service, the uncoupling attachments shall be so applied that the coupler can be operated from left side of car.

PASSENGER-TRAIN CARS WITH OPEN END-PLATFORMS.

HAND-BRAKES:

NUMBER: Each passenger-train car shall be equipped with an efficient hand-brake, which shall operate in harmony with the power-brake thereon.

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches.

Minimum clearance, two (2), preferably two and one-half (2½), inches.

Handholds shall be flush with or project not more than one (1) inch beyond face of end-sill.

LOCATION: Horizontal: One (1) near each side of each end on face of platform end-sill, projecting downward. Clearance of outer end of handhold shall be not more than sixteen (16) inches from end of end-sill.

MANNER OF APPLICATION: End-handholds shall be securely fastened with bolts or rivets.

END PLATFORM-HANDHOLDS:

NUMBER: Four (4). [*Cars equipped with safety-gates do not require end platform-handholds.*]

DIMENSIONS: Minimum clearance two (2), preferably two and one-half (2½), inches, metal.

LOCATION: Horizontal from or near door-post to a point not more than twelve (12) inches from corner of car, then approximately vertical to a point not more than six (6) inches from top of platform. Horizontal portion shall be not less than twenty-four (24) inches in length nor more than forty (40) inches above platform.

MANNER OF APPLICATION: End platform-handholds shall be securely fastened with bolts, rivets, or screws.

UNCOUPLING-LEVERS:

Uncoupling attachments shall be applied so they can be operated by a person standing on the ground.

Minimum length of ground uncoupling attachment, forty-two (42) inches, measured from center of end of car to handle of attachment.

On passenger-train cars used in freight or mixed-train service the uncoupling attachments shall be so applied that the coupler can be operated from left side of car.

PASSENGER-TRAIN CARS WITHOUT END-PLATFORMS.

HAND-BRAKES:

NUMBER: Each passenger-train car shall be equipped with an efficient hand-brake which shall operate in harmony with the power-brake thereon.

LOCATION: Each hand-brake shall be so located that it can be safely operated while car is in motion.

SILL-STEPS:

NUMBER: Four (4).

DIMENSIONS: Minimum length of tread ten (10), preferably twelve (12), inches.

Minimum cross-sectional area one-half (½) by one and one-half (1½) inches or equivalent, wrought iron or steel.

Minimum clear depth eight (8) inches.

LOCATION: One (1) near each end on each side not more than twenty-four (24) inches from corner of car to center of tread of sill-step.

Outside edge of tread of step shall be not more than two (2) inches inside of face of side of car.

Tread shall be not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

MANNER OF APPLICATION: Steps exceeding eighteen (18) inches in depth shall have an additional tread and be laterally braced.

Sill-steps shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.

SIDE-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16), preferably twenty-four (24), inches.

Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: Horizontal or vertical: One (1) near each end on each side of car over sill-step.
If horizontal, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler.
If vertical, lower end not less than eighteen (18) nor more than twenty-four (24) inches above center line of coupler.

MANNER OF APPLICATION: Side-handholds shall be securely fastened with bolts, rivets or screws.

END-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clear length, sixteen (16) inches.
Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: Horizontal: One (1) near each side on each end projecting downward from face of end-sill or sheathing. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

MANNER OF APPLICATION: Handholds shall be flush with or project not more than one (1) inch beyond face of end-sill.
End-handholds shall be securely fastened with bolts or rivets.
When marker sockets or brackets are located so that they can not be conveniently reached from platforms, suitable steps and handholds shall be provided for men to reach such sockets or brackets.

END-HANDRAILS: [*On cars with projecting end-sills.*]

NUMBER: Four (4).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: One (1) on each side of each end, extending horizontally from door-post or vestibule-frame to a point not more than six (6) inches from corner of car, then approximately vertical to a point not more than six (6) inches from top of platform end-sill; horizontal portion shall be not less than thirty (30) nor more than (60) inches above platform end-sill.

MANNER OF APPLICATION: End hand-rails shall be securely fastened with bolts, rivets or screws.

SIDE-DOOR STEPS:

NUMBER: One (1) under each door.

DIMENSIONS: Minimum length of tread, ten (10), preferably twelve (12), inches.
Minimum cross-sectional area, one-half (½) by one and one-half (1½) inches or equivalent, wrought iron or steel.
Minimum clear depth, eight (8) inches.

LOCATION: Outside edge of tread of step not more than two (2) inches inside of face of side of car.
Tread not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

MANNER OF APPLICATION: Steps exceeding eighteen (18) inches in depth shall have an additional tread and be laterally braced.
Side-door steps shall be securely fastened with not less than one-half (½) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half (½) inch rivets.
A vertical handhold not less than twenty-four (24) inches in clear length shall be applied above each side-door step on door-post.

UNCOUPLING-LEVERS:

Uncoupling attachments shall be applied so they can be operated by a person standing on the ground.
Minimum length of ground uncoupling attachment, forty-two (42) inches, measured from center line of end of car to handle of attachment.
On passenger-train cars used in freight or mixed-train service, the uncoupling attachment shall be so applied that the coupler can be operated from the left side of car.

STEAM LOCOMOTIVES USED IN ROAD SERVICE.

TENDER SILL-STEPS:

NUMBER: Four (4) on tender.

DIMENSIONS: Bottom tread not less than eight (8) by twelve (12) inches, metal. [*May have wooden treads.*]
If stirrup-steps are used, clear length of tread shall be not less than ten (10), preferably twelve (12), inches.

LOCATION: One (1) near each corner of tender on sides.

MANNER OF APPLICATION: Tender sill-steps shall be securely fastened with bolts or rivets.

PILOT SILL-STEPS:

NUMBER: Two (2).

DIMENSIONS: Tread not less than eight (8) inches in width by ten (10) inches in length, metal.
[*May have wooden treads.*]

LOCATION: One (1) on or near each end of buffer-beam outside of rail and not more than sixteen (16) inches above rail.

MANNER OF APPLICATION: Pilot sill-steps shall be securely fastened with bolts or rivets.

PILOT-BEAM HANDHOLDS:

NUMBER: Two (2).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clear length, fourteen (14), preferably sixteen (16), inches.
Minimum clearance, two and one-half (2½) inches.

LOCATION: One (1) on each end of buffer-beam.
[*If uncoupling-lever extends across front end of locomotive to within eight (8) inches of end of buffer-beam, and is seven-eighths (⅞) of an inch or more in diameter, securely fastened, with a clearance of two and one-half (2½) inches, it is a handhold.*]

MANNER OF APPLICATION: Pilot-beam handholds shall be securely fastened with bolts or rivets

SIDE-HANDHOLDS:

NUMBER: Six (6).

DIMENSIONS: Minimum diameter, if horizontal, five-eighths (⅝) of an inch; if vertical, seven-eighths (⅞) of an inch, wrought iron or steel.
Horizontal, minimum clear length, sixteen (16) inches.
Vertical, clear length equal to approximate height of tank.
Minimum clearance two (2), preferably two and one-half (2½), inches.

LOCATION: Horizontal or vertical: If vertical, one (1) on each side of tender within six (6) inches of rear or on corner, if horizontal, same as specified for "Box and other house cars."
One (1) on each side of tender near gangway; one (1) on each side of locomotive at gangway; applied vertically.

MANNER OF APPLICATION: Side-handholds shall be securely fastened with not less than one-half (½) inch bolts or rivets.

REAR-END HANDHOLDS:

NUMBER: Two (2).

DIMENSIONS: Minimum diameter, five-eighths (⅝) of an inch, wrought iron or steel.
Minimum clear length, fourteen (14) inches.
Minimum clearance two (2), preferably two and one-half (2½), inches.

LOCATION: Horizontal: One (1) near each side of rear end of tender on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of tender.

MANNER OF APPLICATION: Rear-end handholds shall be securely fastened with not less than one-half (½) inch bolts or rivets.

UNCOUPLING-LEVERS:

NUMBER: Two (2) double levers, operative from either side.

DIMENSIONS: Rear-end levers shall extend across end of tender with handles not more than twelve (12), preferably nine (9), inches from side of tender with a guard bent on handle to give not less than two (2) inches clearance around handle.

LOCATION: One (1) on rear end of tender and one (1) on front end of locomotive. Handles of front-end levers shall be not more than twelve (12), preferably nine (9), inches from ends of buffer-beam, and shall be so constructed as to give a minimum clearance of two (2) inches around handle.

MANNER OF APPLICATION: Uncoupling-levers shall be securely fastened with bolts or rivets.

COUPLERS: Locomotives shall be equipped with automatic couplers at rear of tender and front of locomotive.

STEAM LOCOMOTIVES USED IN SWITCHING SERVICE.

FOOTBOARDS:

NUMBER: Two (2) or more.

DIMENSIONS: Minimum width of tread, ten (10) inches, wood.
Minimum thickness of tread, one and one-half (1½), preferably two (2), inches.
Minimum height of back-stop, four (4) inches above tread.
Height from top of rail to top of tread, not more than twelve (12) nor less than nine (9) inches.

LOCATION: Ends or sides.
If on ends, they shall extend not less than eighteen (18) inches outside of gauge of straight track, and shall be not more than twelve (12) inches shorter than buffer-beam at each end.

MANNER OF APPLICATION: End footboards may be constructed in two (2) sections, *provided* that practically all space on each side of coupler is filled; each section shall be not less than three (3) feet in length.
Footboards shall be securely bolted to two (2) one (1) by four (4) inches metal brackets, *provided* footboard is not cut or notched at any point.

If footboard is cut or notched or in two (2) sections, not less than four (4) one (1) by three (3) inches metal brackets shall be used, two (2) located on each side of coupler. Each bracket shall be securely bolted to buffer-beam, end-sill or tank-frame by not less than two (2) seven-eighths (⅞) inch bolts.

If side footboards are used, a substantial handhold or rail shall be applied not less than thirty (30) inches nor more than sixty (60) inhces above tread of footboard.

SILL-STEPS:

NUMBER: Two (2) or more.

DIMENSIONS: Lower tread of step shall be not less that eight (8) by twelve (12) inches, metal. [*May have wooden treads.*]

If stirrup-steps are used, clear length of tread shall be not less than ten (10), preferably twelve (12), inches.

LOCATION: One (1) or more on each side at gangway secured to locomotive or tender.

MANNER OF APPLICATION: Sill-steps shall be securely fastened with bolts or rivets.

END-HANDHOLDS:

NUMBER: Two (2).

DIMENSIONS: Minimum diameter, one (1) inch, wrought iron or steel.

Minimum clearance, *four* (4) inches, *except* at coupler casting or braces, when minimum clearance shall be two (2) inches.

LOCATION: One (1) on pilot buffer-beam; one on rear end of tender, extending across front end of locomotive and rear end of tender. Ends of handholds shall be not more than six (6) inches from ends of buffer-beam or end-sill, securely fastened at ends.

MANNER OF APPLICATION: End-handholds shall be securely fastened with bolts or rivets.

SIDE-HANDHOLDS:

NUMBER: Four (4).

DIMENSIONS: Minimum diameter, seven-eighths (⅞) of an inch, wrought iron or steel.

Clear length equal to approximate height of tank.

Minimum clearance, two (2), preferably two and one-half (2½), inches.

LOCATION: Vertical. One (1) on each side of tender near front corner; one (1) on each side of locomotive at gangway.

MANNER OF APPLICATION: Side handholds shall be securely fastened with bolts or rivets.

UNCOUPLING-LEVERS:

NUMBER: Two (2) double levers, operative from either side.

DIMENSIONS: Handles of front-end levers shall be not more than twelve (12), preferably nine (9), inches from ends of buffer-beam, and shall be so constructed as to give a minimum clearance of two (2) inches around

Rear-end levers shall extend across end of tender with handles not more than twelve (12), preferably nine (9), inches from side of tender, with a guard bent on handle to give not less than two (2) inches clearance around handle.

LOCATION: One (1) on rear end of tender and one (1) on front end of locomotive.

HANDRAILS AND STEPS FOR HEADLIGHTS:

Switching-locomotives with sloping tenders with manhole or headlight located on sloping portion of tender shall be equipped with secure steps and handrail or with platform and handrail leading to such manhole or headlight.

END-LADDER CLEARANCE:

No part of locomotive or tender *except* draft-rigging, coupler and attachments, safety-chains, buffer-block, foot-board, brake-pipe, signal-pipe, steam-heat pipe or arms of uncoupling-lever shall extend to within fourteen (14) inches of a vertical plane passing through the inside face of knuckle when closed with horn of coupler against buffer-block or end-sill.

COUPLERS: Locomotives shall be equipped with automatic couplers at rear of tender and front of locomotive.

SPECIFICATIONS COMMON TO ALL STEAM LOCOMOTIVES.

HAND-BRAKES:

Hand-brakes will not be required on locomotives nor on tenders when attached to locomotives.

If tenders are detached from locomotives and used in special service, they shall be equipped with efficient hand-brakes.

RUNNING-BOARDS:

NUMBER: Two (2).

DIMENSIONS: Not less than ten (10) inches wide. If of wood, not less than one and one-half (1½) inches in thickness; if of metal, not less than three-sixteenths (3/16) of an inch, properly supported.

LOCATION: One (1) on each side of boiler extending from cab to front end near pilot-beam. [*Running-boards may be in sections. Flat-top steam-chests may form section of running-board.*]

MANNER OF APPLICATION: Running boards shall be securely fastened with bolts, rivets or studs. Locomotives having Wootten type boilers with cab located on top of boiler more than twelve (12) inches forward from boiler-head shall have suitable running-boards running from cab to rear of locomotive, with handrailings not less than twenty (20) nor more than forty-eight (48) inches above outside edge of running-boards, securely fastened with bolts, rivets or studs.

HANDRAILS:

NUMBER: Two (2) or more.

DIMENSIONS: Not less than one (1) inch in diameter, wrought iron or steel.

LOCATION: One on each side of boiler extending from near cab to near front end of boiler, and extending across front end of boiler, not less than twenty-four (24) nor more than sixty-six (66) inches above running-board.

MANNER OF APPLICATION: Handrails shall be securely fastened to boiler.

TENDERS OF VANDERBILT TYPE:

Tenders known as the Vanderbilt type shall be equipped with running-boards; one (1) on each side of tender not less than ten (10) inches in width and one on top of tender not less than forty-eight (48) inches in width, extending from coal space to rear of tender.

There shall be a handrail on each side of top running-board, extending from coal space to rear of tank, not less than one (1) inch in diameter and not less than twenty (20) inches in height above running-board from coal space to manhole.

There shall be a handrail extending from coal space to within twelve (12) inches of rear of tank, attached to each side of tank above side running-board, not less than thirty (30) nor more than sixty-six (66) inches above running board.

There shall be one (1) vertical end handhold on each side of Vanderbilt type of tender, located within eight (8) inches of rear of tank extending from within eight (8) inches of top of end-sill to within eight (8) inches of side handrail. Post supporting rear end of side running-board if not more than two (2) inches in diameter and properly located, may form section of handhold.

An additional horizontal end handhold shall be applied on rear end of all Vanderbilt type of tenders which are not equipped with vestibules. Handhold to be located not less than thirty (30) nor more than sixty-six (66) inches above top of end-sill. Clear length of handhold to be not less than forty-eight (48) inches.

Ladders shall be applied at forward ends of side running-boards.

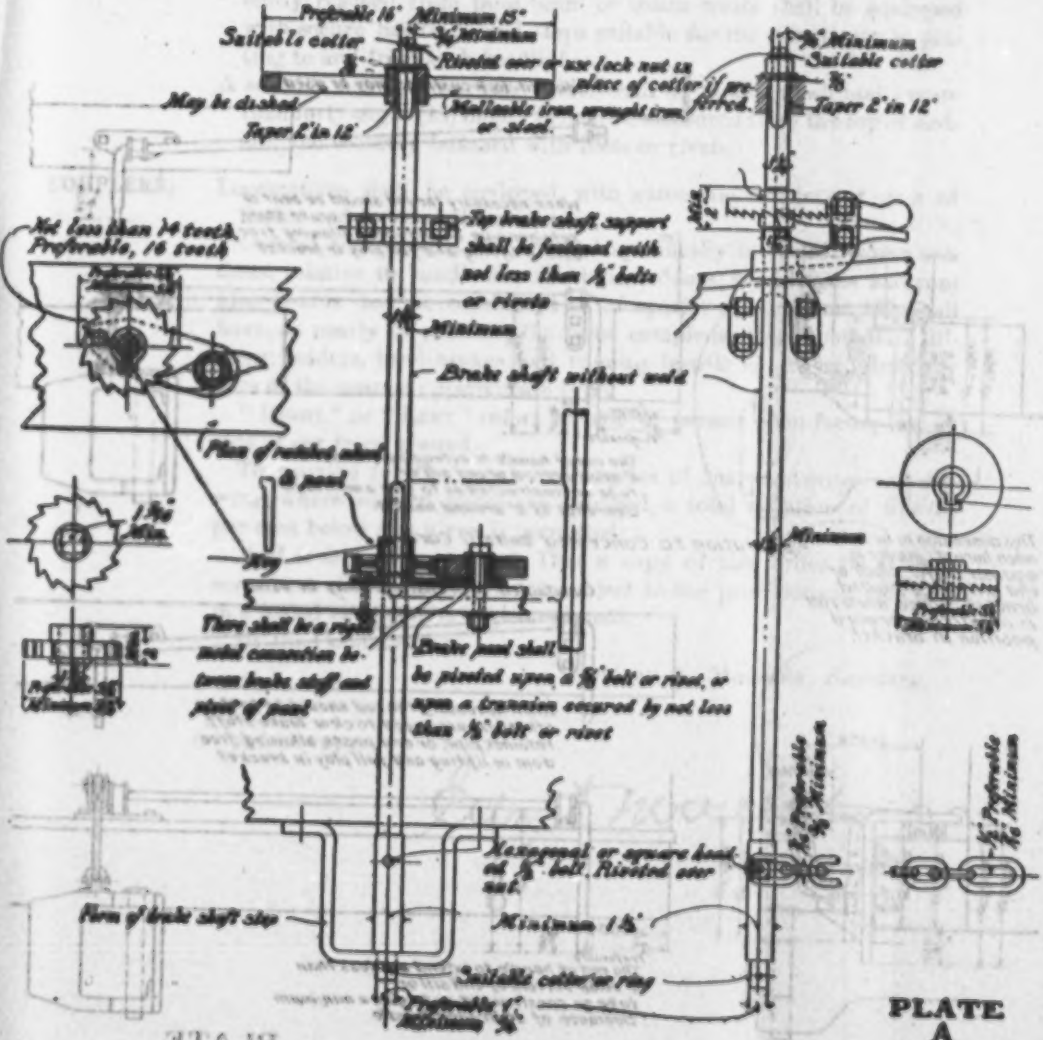
Preferable 16" Minimum 15"
Suitable cotter
Riveted over or use lock nut in place of cotter if preferred.
May be dished
Taper 2" in 12"
Malleable iron, wrought iron or steel.
Not less than 14 teeth. Preferable, 16 teeth
Top brake shaft support shall be fastened with not less than ⅝" bolts or rivets
Minimum
Brake shaft without weld
Plan of ratchet wheel & pawl
Ring
There shall be a rigid metal connection between brake shaft and pivot of pawl
Brake pawl shall be pivoted upon a ⅝" bolt or rivet, or upon a trunnion secured by not less than ½" bolt or rivet
Hexagonal or square head of ⅝" bolt. Riveted over nut.
Plan of brake shaft stop
Minimum 15"
Suitable cotter or ring
Preferable 1" Minimum ⅞"
Taper 2" in 12"
Minimum
Preferable ⅝" Minimum ½"
Preferable ½" Minimum ⅜"

PLATE A

[Any efficient arrangement of ratchet-wheel and pawl may be used.]

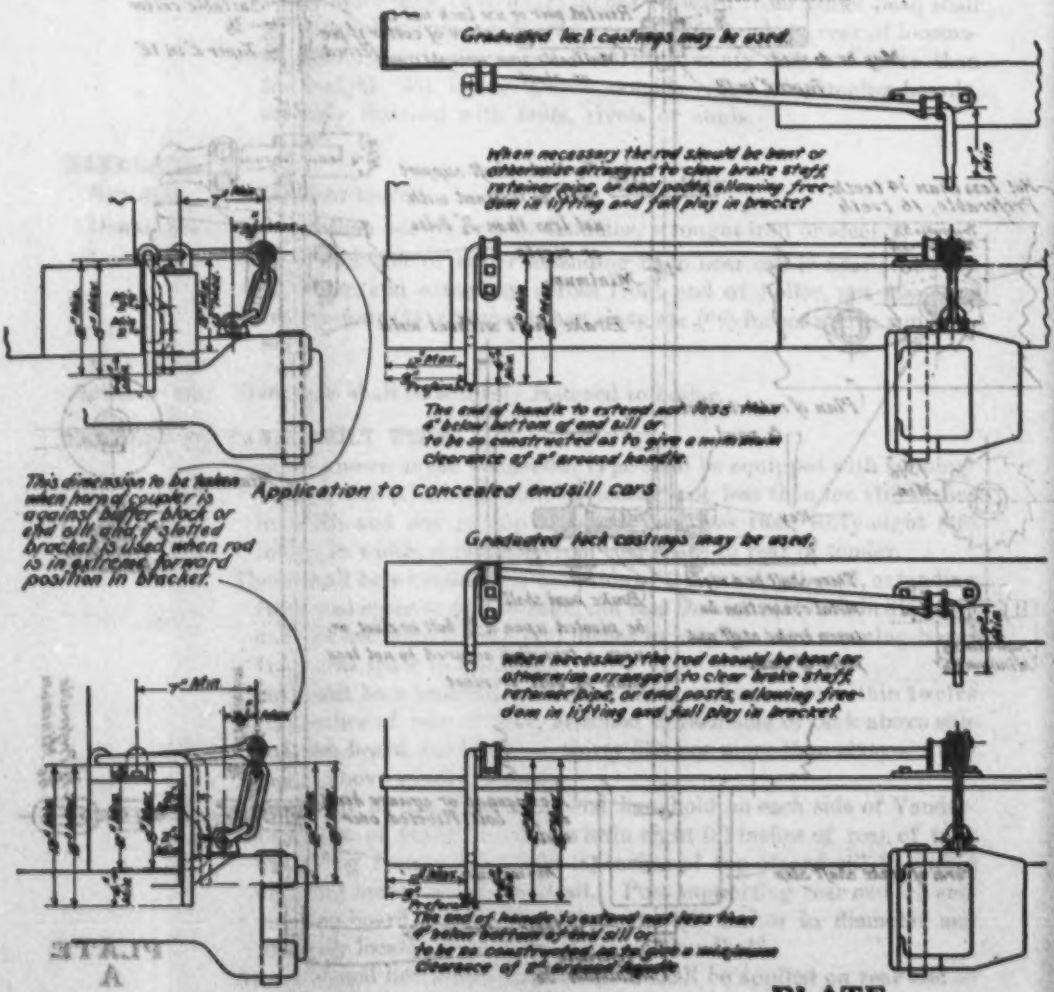
Graduated lock castings may be used.
When necessary the rod should be bent or otherwise arranged to clear brake staff, retainer pipe, or end posts, allowing freedom in lifting and full play in bracket.
The end of handle to extend not less than 4" below bottom of end sill or, to be so constructed as to give a minimum clearance of 2" around handle.
This dimension to be taken when horn of coupler is against buffer block or end sill, and, if slotted bracket is used, when rod is in extreme forward position in bracket.
Application to concealed endsill cars
Graduated lock castings may be used.
When necessary the rod should be bent or otherwise arranged to clear brake staff, retainer pipe, or end posts, allowing freedom in lifting and full play in bracket.
The end of handle to extend not less than 4" below bottom of end sill or, to be so constructed as to give a minimum clearance of 2" around handle.
Application to outside endsill cars.

PLATE B

HANDRAILS AND STEPS FOR HEADLIGHTS:

Locomotives having headlights which can not be safely and conveniently reached from pilot-beam or steam-chests shall be equipped with secure handrails and steps suitable for the use of men in getting to and from such headlights.

A suitable metal end or side-ladder shall be applied to all tanks more than forty-eight (48) inches in height, measured from the top of end-sill, and securely fastened with bolts or rivets.

COUPLERS: Locomotives shall be equipped with automatic couplers at rear of tender and front of locomotive.

Cars of construction not covered specifically in the foregoing sections, relative to handholds, sill-steps, ladders, hand-brakes and running-boards may be considered as of special construction, but shall have, as nearly as possible, the same complement of handholds, sill-steps, ladders, hand-brakes and running-boards as are required for cars of the nearest approximate type.

"RIGHT" or "LEFT" refers to side of person when facing end or side of car from ground.

To provide for the usual inaccuracies of manufacturing and for wear, where sizes of metal are specified, a total variation of five (5) per cent below size given is permitted.

And it is further ordered, That a copy of this order be at once served on all common carriers, subject to the provisions of said act, in a sealed envelope by registered mail.

By the Commission:

EDWARD A. MOSELEY, *Secretary*.

A true copy.

Edw. A. Moseley

Secretary.

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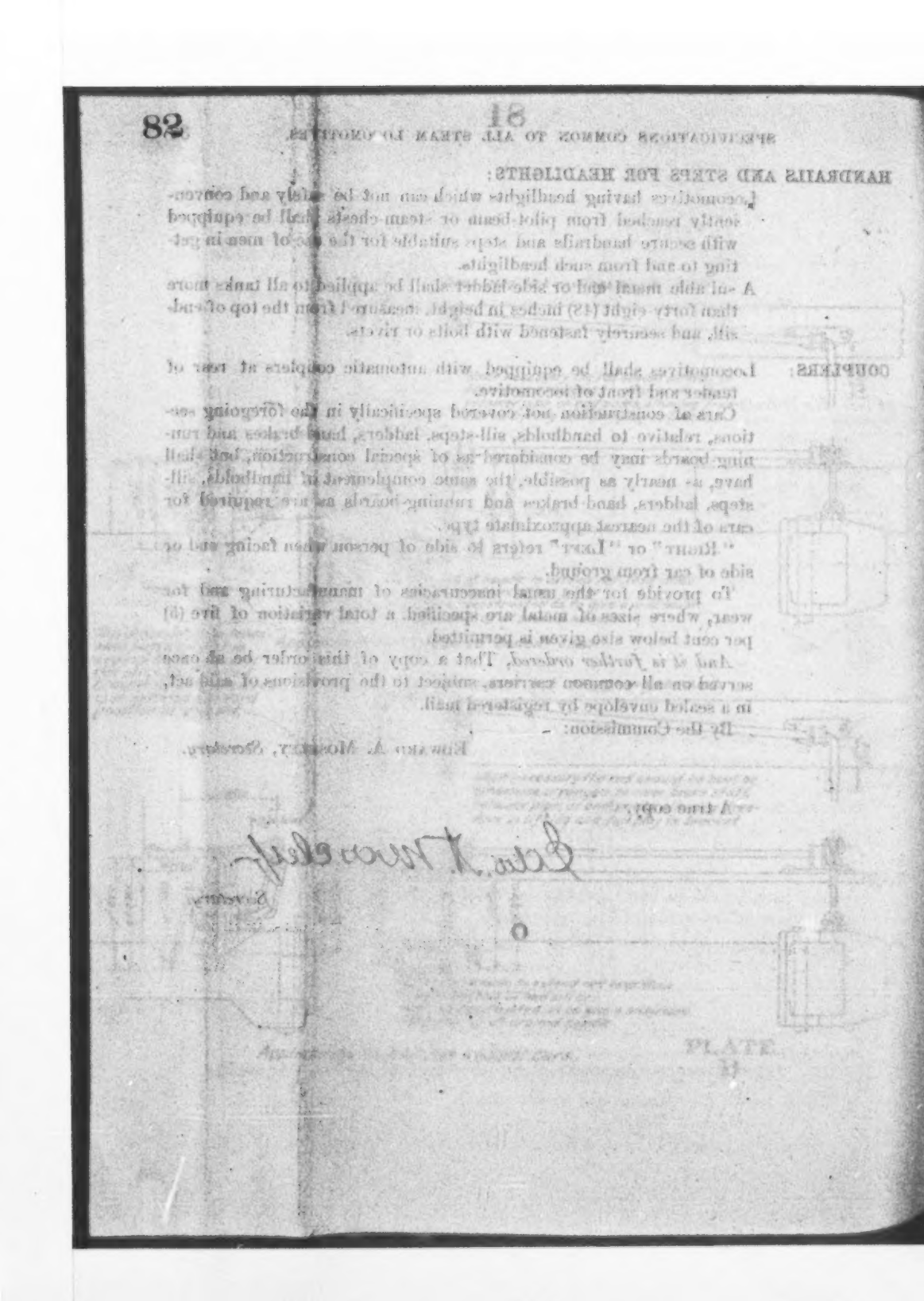

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3.

Information

Issued by the

Second Assistant Postmaster General

Relative to the

Transportation of Mails

by Railroads.

[Seal Post-Office Department, United States of America.]

(The Public Service Commission of the Commonwealth of Pennsylvania. Cp. Docket No. 489—1915 (year). Res. Exhibit No. 3. Hearing held 12/21/15 (date). H. F. Jolly, Reporter.)

Washington.
Government Printing Office.
1913.

4—783

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Information

Issued by the

Second Assistant Postmaster General

Relative to the

Transportation of Mails

by Railroads.

[Seal Post-Office Department, United States of America.]

Washington.
Government Printing Office.
1913.

120 *Information Relative to the Transportation of Mails by Railroads.*

[Unless otherwise stated, the sections quoted are from the Postal Laws and Regulations, 1913, or amendments thereof.]

Authorization of Service and Rate of Compensation.

Existing Service.

Manner of Authorization.

The authorization of mail service to be performed by railway companies is made by the Postmaster General under sections 3942, 3964, and 3965, Revised Statutes (secs. 1316, 1305, and 1307, P. L. and R., 1913), but without formal contract reduced to one instrument, the mutual agreement of the department and the company being followed by a formal order establishing the service over a definite line and between stated termini.

Rates of Compensation.

With reference to the rates of compensation allowed for railroad mail service the law recognizes two classes of railroads: First, those unaided by land grant, and, second, those to which the United States have furnished aid by grant of lands, right of way, or otherwise.

Adjustment of Compensation; Conditions and Rates. R.S., Sec. 4002.

Sec. 1317. The Postmaster General is authorized and directed to readjust the compensation * * * to be paid for the transportation of mails or railroad routes upon the conditions and at the rates hereinafter mentioned:

Conditions.

First. That the mails shall be conveyed with due frequency and speed; and that sufficient and suitable room, fixtures, and furniture, in a car or apartment properly lighted and warmed, shall be provided for * * * (railway postal clerks) to accompany and distribute the mails.

Quadrennial Weighings.

Second. That the pay per mile per annum shall not exceed the following rates, namely: On routes carrying their whole length an average weight of mails per day of two hundred pounds, fifty
121 dollars; five hundred pounds, seventy-five dollars; one thousand pounds, one hundred dollars; one thousand five hundred pounds, one hundred and twenty-five dollars; two thousand

pounds, one hundred and fifty dollars; three thousand five hundred pounds, one hundred and seventy-five dollars; five thousand pounds, two hundred dollars, and twenty-five dollars additional for every additional two thousand pounds, the average weight to be ascertained, in exery case, by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times, after June tnirtieth, eighteen hundred and seventy-three, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster General may direct.

Compensation Reduced Ten Per Cent. 1876, July 12; 19 Stat., 79.

2. The Postmaster General * * * is hereby authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-six, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails ten per centum per annum from the rates fixed and allowed by the first section of an act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," approved March third, eighteen hundred and seventy-three (R. S. §4002), for the transportation of mails on the basis of the average weight.

Compensation Reduced Five Per Cent More. 1878, Jun- 17; 20 Stat., 142.

3. The Postmaster General * * * is hereby authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-eight, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails five per centum per annum from the rates for the transportation of mails, on the basis of the average weight fixed and allowed by the [preceding paragraph] first section of an act entitled "An act making ap-
122 propriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes," approved July twelfth, eighteen hundred and seventy-six.

Compensation Further Reduced, 1907, Mar. 2; 34 Stat., 1212.

4. The Postmaster General is hereby authorized and directed to readjust the compensation to be paid from and after the first day of July, nineteen hundred and seven, for the transportation of mail on railroad routes carrying their whole length an average weight of mails per day of upward of five thousand pounds by making the following changes in the present rates per mile per annum for the transportation of mail on such routes, and hereafter the rates on such routes shall be as follows: On routes carrying their whole length

a naverage weight of mail per day of more than five thousand pounds and less than forty-eight thousand pounds the rate shall be five per centum less than the present rates on all weights carried in excess of five thousand pounds; and on routes carrying their whole length an average weight of mail per day more than forty-eight thousand pounds the rate shall be five per centum less than the present rates on all weight carried in excess of five thousand pounds up to forty-eight thousand pounds, and for each additional two thousand pounds in excess of forty-eight thousand pounds at the rate of nineteen dollars and twenty-four cents upon all roads other than land-grant roads, and upon all land-grant roads the rate shall be seventeen dollars and ten cents for each two thousand pounds carried in excess of said forty-eight thousand pounds.

As to Land-grant Railroads. 1910, May 12; 36 Stat., 362.

5. The provision of the act of March second, nineteen hundred and seven [34 Stat., 1212], * * * fixing the compensation to be paid for transportation of mail on land-grant railroads at the rate of seventeen dollars and ten cents for each two thousand pounds carried in excess of forty-eight thousand pounds, is hereby amended to make such rate of compensation after June thirtieth, nineteen hundred and ten, fifteen dollars and thirty-nine cents for each two thousand pounds carried in excess of forty-eight thousand
123 pounds, and the Postmaster General is hereby authorized and directed to readjust the compensation in accordance with this amendment.

* * * * * * *

Weighing of Mails. 1905, Mar. 3; 33 Stat., 1088.

8. That hereafter before making the readjustment of pay for transportation of mails on railroad routes, the average weight shall be ascertained by the actual weighing of the mails for such a number of successive working days not less than ninety, at such times after June thirtieth, nineteen hundred and five, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster General may direct.

* * * * * * *

Divisor for Obtaining Average Daily Weight.

10. When the weight of mail is taken on railroad routes the whole number of days included in the weighing period shall be used as a divisor for obtaining the agerage weight per day.

Land-grant Roads. R. S., sec. 4001. Compensation to Be Fixed by Congress. By Postmaster General When Congress Fails.

Sec. 1318. All railway companies to which the United States have furnished aid, by grant of lands, right of way, or otherwise, shall carry the mail at such prices as Congress may by law provide; and, until such price is fixed by law, the Postmaster General may fix the rate of compensation.

Land-grant Roads. 1876, July 12; 19 Stat., 82. Rate of Compensation to.

Sec. 1319. Railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this act. (See paragraph 5, sec. 1317.)

124 *Table of Maximum Rates of Pay for Railroad Mail Service.*

The maximum compensation for general railroad mail service and for service over land-grant railroads is shown in the following table:

(1) Average weight of mails per day carried over whole length of route.	Pay per mile per annum: (2) Rates allowable under sec. 4002, R. S. (act of Mar. 3, 1873).	(3) Rates allowable under acts of July 12, 1876, June 17, 1878, and Mar. 3, 1907 (see note 1).	(4) Rates allowable to land-grant railroads under acts of July 12, 1876, June 17, 1878, Mar. 2, 1907, and May 12, 1910 (see notes 1 and 2).	(5) Intermediate weight warranting allowance of $1 per mile under the law of 1873 and the custom of the department, subject to acts of July 12, 1876, June 17, 1878, and Mar. 3, 1907 (see note 1).
				Pounds.
200 pounds	$50.00	$42.75	$34.20	..
200 to 500 pounds	.....	.....	.....	12
500 pounds	75.00	64.12	51.30	..
500 to 1,000 pounds	.....	.....	.....	20
1,000 pounds	100.00	85.50	68.40	..
1,000 to 1,500 pounds	.....	.....	.....	20
1,500 pounds	125.00	106.87	85.50	..
1,500 to 2,000 pounds	.....	.....	.....	20
2,000 pounds	150.00	128.25	102.60	..
2,000 to 3,500 pounds	.....	.....	.....	60
3,500 pounds	175.00	149.62	119.70	..
3,500 to 5,000 pounds	.....	.....	.....	60
5,000 pounds	200.00	171.00	136.80	..
For each additional 2,000 pounds above 5,000 and less than 48,000 pounds	25.00	20.30+	16.24+	..
Above 5,000 and less than 48,000 pounds	.....	.....	.....	80
For each additional 2,000 pounds in excess of 48,000 pounds	25.00	19.24	15.39	..

	Character of route. Non-land grant.	Land grant.
	Pounds.	Pounds.
Intermediate weight above 48,000 pounds warranting addition of $1, net	108.95	129.90

No allowance is made for weights not justifying the addition of $1.

125 NOTE 1.—The act of Mar. 2, 1907, affects only routes carrying over 5,000 pounds.

NOTE 2.—The act of May 12, 1910, affects only land-grant routes carrying over 48,000 pounds.

When Mails Are Diverted, Railroad Pay May Be Readjusted. 1912, Aug. 24; 37 Stat., 554.

Sec. 1321. When, after a weighing of the mails for the purpose of readjusting the compensation for their transportation on a railroad route, mails are diverted therefrom or thereto, the Postmaster General may, in his discretion, ascertain the effect of such diversion by a weighing of such mails for such number of successive working days as he may determine, and have the weights stated and verified to him as in other cases, and readjust the compensation on the routes affected accordingly: Provided, That no readjustment shall be made unless the diverted mails equal at least ten per centum of the average daily weight on any of the routes affected: Provided further, That readjustment made hereunder shall not take effect before July first, nineteen hundred and twelve, and shall be for diversions occurring after January first, nineteen hundred and twelve.

Weights upon Spur or Lateral Lines—How Computed.

Sec. 1323. Where the main-line train carries onto a spur or lateral line mail matter which has no relationship therewith beyond the fact that the operations of the two are part of one railroad organization or train system, only such of the mails as are directly associated with and are dependent upon such spur or lateral line for advancement or distribution shall be taken account of in computing the average daily weight carried thereon.

Lap Service.

Compensation for Lap Service.

Sec. 1325, par. 1. The Post Office Department will not favor the authorization of more than one mail route over the same railroad. Where, however, it becomes necessary to authorize more than one route, the second route shall be at the lap rate; i. e., at a rate of compensation per mile per annum equal to the difference between the rate earned by the average daily weight of the first or original route and the rate which would be earned if the average daily weight of the lap route were added thereto.

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Grantee's Assumption of Grantor's Mail Obligations under Grant of Trackage Rights.

Grant of Trackage Rights to Include Performance of Service.

Sec. 1325, par. 2. The department will not favor the recognition of lap service originating during the term where such claim arises by

reason of a grant or lease of trackage rights to another by a company operating a mail route. In all cases where such relations arise it is expected that the grantor or lessor will stipulate with the grantee or lessee that the former's obligation to carry the mails over the established post route shall be assumed and fulfilled by the latter for said grantor or lessor so far as it becomes desirable to forward mails by trains of the latter.

New Service.

Consideration of Advisability of Authorization.

The Second Assistant Postmaster General gives consideration to the advisability of the authorization of proposed railroad mail service.

Mails Not to Be Carried Beyond a Terminus Without Authority.

Sec. 1326. When railroads are extended or trains run beyond the terminus of the route on which the transportation of mails is authorized, the mails shall not be carried beyond such terminus until ordered by the Second Assistant Postmaster General.

Service on New or Extended Railroad—Investigation of—Commencement of.

Sec. 1327. Before service is placed upon a new railroad or an extension of an existing road the Second Assistant Postmaster General will, where he deems it advisable, require a personal investigation, with report and recommendation, as to the necessity for such service.

2. Arrangements shall not be made for the commencement of service on new or extended routes, either regularly or under waivers, until the same has been authorized by the Second Assistant Postmaster General.

New Service—Compensation for—How Determined.

Sec. 1328. When a new railroad route shall be authorized after the regular weighing of mails for the section in which it is located has begun, the compensation for service thereon, until the
127 beginning of the next term for which the succeeding general weighing shall be had for the section in which said route is located, shall be fixed by agreement at such rate, not exceeding $42.75 per mile per annum, as the importance and character of the service will warrant.

Railway Post-Office Car Service.

When R. P. O. Cars May Be Authorized.

In case the needs of the service for space and distribution require facilities that can not be secured by apartments in cars furnished by

a company, the department may authorize the use of railway post-office cars. These cars are furnished by the company.

Additional Pay for Railway Post-Office Lines. R. S., Sec. 4004—Rates of.

Sec. 1329. Additional pay may be allowed for every line comprising a daily trip each way of railway post-office cars, at a rate not exceeding twenty-five dollars per mile per annum for cars forty feet in length, and thirty dollars per mile per annum for forty-five-foot cars, and forty dollars per mile per annum for fifty-foot cars; and fifty dollars per mile per annum for fifty-five to sixty-foot cars.

Pay After July 1, 1907. 1907, Mar. 2. 34 Stat., 1212—Rates of.

2. After July first, nineteen hundred and seven, additional pay allowed for every line comprising a daily trip each way of railway post-office cars shall be at a rate not exceeding twenty-five dollars per mile per annum for cars forty feet in length, and twenty-seven dollars and fifty cents per mile per annum for forty-five-foot cars, and thirty-two dollars and fifty cents per mile per annum for fifty-foot cars, and forty dollars per mile per annum for cars fifty-five feet or more in length.

Note.

NOTE.—This statute does not authorize a pro rata compensation to be paid for cars which are less than 40 feet in length.

Post-Office Cars—Style, Character, and Equipment. 1879, Mar. 3. 20 Stat., 358.

Sec. 1330. All cars or parts of cars used for the Railway Mail Service shall be of such style, length, and character, and furnished in such manner, as shall be required by the Postmaster General, and shall be construed, fitted up, maintained, heated, and lighted
128 by and at the expense of the railroad companies.

Note.

NOTE.—This statute supplements Revised Statutes, section 4005. Section 1333 prescribes different articles that shall be included in the equipment of a car.

Restriction as to Use of Appropriation. 1911, Mar. 4; 36 Stat., 1335. Post-Office Cars—Construction—Steel Required.

Sec. 1331. After the first of July, nineteen hundred and eleven, no pay shall be allowed for the use of any wooden full railway post-office car unless constructed substantially in accordance with the most approved plans and specifications of the Post Office Department for such type of cars, nor for any wooden full railway post-

office car run in any train between adjoining steel cars or between the engine and a steel car adjoining, and that hereafter additional cars accepted for this service shall be of steel, or with steel underframe, if used in a train in which a majority of the cars are of like construction: Provided further, That after the first of July, nineteen hundred and sixteen, the Postmaster General shall not approve or allow to be used or pay for any full railway post-office car not constructed of steel or with steel underframe, if such post-office car is used in a train in which a majority of the cars are of steel or of steel underframe construction.

Restriction as to Use of Appropriation. 1912, Aug. 24; 37 Stat., 547. After July 1, 1917, All Cars to be of Steel or Steel Underframe, etc. At Least 25 Per Cent of Certain Cars to be Replaced Annually after June, 1913. New Cars to be of Steel.

Sec. 1332. After the first of July, nineteen hundred and seventeen, the Postmaster General shall not approve or allow to be used or pay for any full railway post-office car not constructed of steel or steel underframe or equally indestructible material, and not less than twenty-five per centum of the railway post-office cars of a railroad company not conforming to the provisions of this act shall be replaced with cars constructed of steel annually after June, nineteen hundred and thirteen; and all cars accepted for this service and contracted for by the railroad companies after the passage of this act shall be constructed of steel.

Cars to be Sound in Material and Construction, etc.

2. No part of this amount shall be paid for the use of any car which is not sound in material and construction, and which is not equipped with sanitary drinking-water containers and toilet
129 facilities, nor unless such car is regularly and thoroughly cleaned.

Note.

NOTE.—The word "amount" in paragraph 2 refers to the appropriation for railway post-office car service for the fiscal year ending June 30, 1914. Similar provisions were contained in the appropriation acts for the fiscal years 1912 and 1913.

Failure to Provide Cars and to Properly Equip. 1881, Mar. 1, 21 Stat., 375—Penalty for.

Sec. 1333. * * * When any railroad company fail or refuse to provide railway post-office cars when required by the Post Office Department, or shall fail or refuse to provide suitable safety heaters and safety lamps therefor, with such number of saws and axes to each car for use in case of accident as may be required by the Post Office Department, said company shall have its pay reduced ten per centum on the rates fixed (by law) * * * (See sec. 1317.)

Note.

NOTE.—Revised Statutes, section 4003, provides that "in case any railroad company now furnishing railway post-office cars shall refuse to provide such cars, such compny shall not be entitled to any increase of compensation under the provisions of the next section" (sec. 1329). The section was only applicable to conditions at the time of its enactment, and the additional compensation referred to is only to be allowed for lines comprising railway post-office cars. The above statute imposes a direct penalty on a company for failure to provide railway post-office cars in the shape of a reduction of its pay. The omitted part merely recites Revised Statutes, section 4002, as amended by the acts of June 12, 1876, and June 17, 1878. (See sec. 1317.)

Payment for Railway Post-Office Cars—Contingent Upon Proper Dimensions and Equipment—Partial Use of.

Sec. 1334. No payment for railway post-office cars shall be allowed unless full cars of the length authorized (inside measurement), fully equipped in accordance with the requirements of the General Superintendent of Railway Mail Service, are furnished and used exclusively for post-office purposes, provided, that permission may be granted upon application from a railroad company to
130 permit the furnishing of a car 70 feet in length, 30 feet of which may be used by the company, and 40 feet (inside measurement) of which shall be constructed, fitted up, and furnished for railway post-office purposes as provided by law and in accordance with the requirements of the General Superintendent of Railway Mail Service, to be used exclusively for railway post-office purposes; such car shall be regarded as a 40-foot railway post-office car, and when duly authorized and used for such purposes payment for the same as a 40-foot railway post-office car will be warranted.

2. The assignment of space in cars used partially for other than railway post-office purposes shall not entitle the railroad company to railway post-office car pay, excepting as provided in the preceding paragraph.

What a Line Consists of.

3. A line consists of a car or cars sufficient to perform a daily round trip over the whole route, and full pay therefor shall be allowed only where such car or cars are accompanied by an employee or employees of the postal service in the discharge of the duties of distributing and handling the mails, as contemplated by the use of such cars in the service, except as hereinafter provided. The authorization of railway post-office cars may be made as follows:

Recommendation and Authorization for Cars—Basis of—Uniform Size—40-Foot Cars—Lines by Agreement—Half Lines—Apartment Space in Addition to Full Line—Maximum Length.

(*a*) In determining the amount of space which shall be the basis for a recommendation for and authorization of railway post-office cars and pay therefor the principal element shall be the amount of space necessary for railway post-office purposes; that is, for the handling and the distribution of the mails en route, the storage of the mails when needed for such distribution, and the storage, when needed, and handling of registered matter, and also mails for local delivery, except where the quantity for one delivery warrants treating it as storage mail.

(*b*) Where the needs of the postal service in both directions warrant the authorization of cars of uniform size in both directions the authorization may be made for a line of cars of such size at the maximum rate of pay provided by law.

131 (*c*) Where the needs of the postal service require 40 feet of car space for railway post-office purposes in one direction, but less than 40 feet in the opposite direction, a line of 40-foot cars may be authorized. If more than 40 feet are required in one dirction and less than 40 feet in the opposite direction a line of cars of the dimensions required to perform the maximum service may be authorized by agreement with the railroad company with pay equal to half the sum of the pay for a line of cars of the maximum length and a line of cars 40 feet in length.

(*d*) If the needs of the service require at least 40 feet in one direction and greater space in the opposite direction, a line of cars of the dimensions required to perform the maximum service may be authorized by agreement with the railroad company with pay equal to half the sum of the pay for a line of cars of the maximum length and a line of cars of the minimum length required.

(*e*) Where railway post-office cars are operated in one direction over one route and in the opposite direction over another route they may be authorized as half lines over the routes over which they run at half the rate of a line of cars of the dimensions needed for the purposes of the postal service over the routes respectively with a minimum allowance for a 40-foot basis.

(*f*) Where a line of 60-foot cars is authorized and paid for, and the needs of the service require additional space but do not warrant the authorization of an additional line of 40-foot cars, the railroad company may be required to furnish apartment space.

(*g*) Pay for the maximum length of cars authorized may be allowed when under all the facts and circumstances the same is deemed justified.

When Pay to Commence.

4. No pay shall be allowed for railway post-office car service or for railroad mail service prior to the date upon which the service is authorized to commence; and in every case the authorization of the

establishment of the service must have been made by a preceding order.

132 Construction of Cars.

5. All postal cars shall be built upon plans and specifications furnished by the General Superintendent of Railway Mail Service, and such cars shall be subject to inspection before being accepted by the department.

Reports as to Full Railway Post-office Service—Where Full Cars Needed—Where Cars Not Needed—Where Smaller Cars Than Contracted Furnished.

Sec. 1335. Division superintendents of Railway Mail Service shall report to the General Superintendent all cases where full railway post-office cars are needed on lines in their divisions. Such reports should show the amount of mail carried, pouches and sacks separately, for a period of 30 days; the quantity of mail for distribution and the through mail for which simply storage space is needed, separately, and the number of separations made in letters and papers. Superintendents shall also report cases where railway post-office cars are in use and are not needed—that is, where the mail could be worked in a 30-foot apartment or less; also cases where a railroad company substitutes smaller cars than those for which the Post Office Department is paying.

Full and Apartment Railway Post Office Cars.

Construction, Sanitation, Operation, etc.

Under the provisions of sections 1330, 1331, and 1332, Postal Laws and Regulations, 1913, the following rules are issued, covering the construction of new, reconstruction of old, inspection, sanitation, care and operation of full and apartment railway post office cars. These rules supersede any prior instructions inconsistent therewith.

Section 1.—New Cars.

Requirements for Steel Full R. P. O. and Apartment Cars—Interior Fixtures—New Full R. P. O. Cars Must Be of Steel—Apartment Cars—New Apartment Cars.

(a) In all features of construction steel full cars must conform to the standard specifications for such cars approved March 28, 1912, and subsequent revisions and amendments. This also applies to steel apartment cars in their entirety, except to alley apartment cars in which the postal apartment is located in the middle of the car, and to combination postal and passenger apartment cars. In cars of
133 these classes, the requirements of section 24, construction specifications, which provides that the sum of the section

moduli of vertical end members shall not be less than 65, may be considered as applying at passenger end to the vertical end members of the body of the car and main members of the vestibule taken together.

(*b*) The interior arrangement and fixtures of full and apartment railway post office cars shall conform in all material respects to the specifications of fixtures for mail cars approved March 28, 1912, and subsequent revisions and amendments thereto, and to standard floor plans and drawings approved February 26, 1912, and June 6, 1912, and revisions thereof.

(*c*) In matters of construction and interior fixtures, the explanatory circular letter issued by the Second Assistant Postmaster General under date of June 9, 1913, shall be considered as an interpretation of and therefore a part of the specifications before referred to.

(*d*) Under the provisions of the act of Congress of August 24, 1912, all new full cars (that is, cars not in existence, or in process of construction, or under contract for construction, at the time of the passage of the act) shall be constructed of steel. This means all-steel cars and therefore bars the acceptances of steel underframe full cars except those in service or under contract or construction on or prior to August 24, 1912. (See section 2 (*a*) relative to placing steel underframes under existing wooden cars for use until not later than June 30, 1917.)

(*e*) Under existing rulings of the department, apartment mail cars intended for operation in connection with steel or steel underframe cars may be either a steel or steel underframe type. Steel apartment cars shall conform in all features of construction to standard specifications except as stated in paragraph (*a*) of this section. The underframes of steel underframe apartment cars shall conform in all features of construction to standard specifications for full steel postal cars before referred to. The superstructure of such cars must either conform to Plan No. 1 of the Post Office Department for wooden cars, reinforced by metal vertical end members; or, the framing of the superstructure may be of steel. In both types the section moduli of the metal vertical end members shall not be less than 65, distributed as provided in section 24 of the standard construction specifications. New wooden apartment cars intended for operation only with wooden cars should conform substantially to Plan No. 1 for wooden cars. The provisions of paragraph (*a*) so far as relating to steel apartment cars also apply to steel underframe apartment cars.

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(*f*) The present rules of the department do not require that new apartment mail cars shall be of steel or steel underframe construction except such as are intended for operation between steel or steel underframe equipment adjoining or in trains in which a majority of the cars are of such construction. However, the department prefers that new apartment cars, especially those intended for service in fast heavy trains, shall be of steel or steel underframe construction. In view of the fact that the present trend in new passenger equipment is very largely in the direction of steel or steel underframe construction, it would appear to be to the advantage of the companies to have new apartment cars of such construction.

Section 2.—Reconstruction of Full and Apartment Railway Post-Office Cars.

Reconstruction of Cars.

(*a*) Full cars may be rebuilt into apartment cars, but no wooden car not accepted for full railway post office car service prior to the passage of the act of August 24, 1912, may be rebuilt for service as a wooden full car, nor will it be permitted to apply steel underframes to existing wooden full railway post office cars except as subject to the provisions of a ruling by the Second Assistant Postmaster General under date of February 5, 1913, as follows:—

Recently several railroad companies have made inquiry as to whether the act of August 24, 1912, prohibits the application
135 of steel underframes to existing wooden full railway post office cars constructed in accordance with Plan No. 1.

The companies have been informed that they may apply steel underframes to such cars for use until it becomes necessary under the law, not later than July 1, 1917, to replace them with steel cars, such converted cars being subject to the stipulation that not less than 25 per centum of the railway post office cars of a railroad company not conforming to the provisions of the act (that is, not constructed of steel or steel underframe or equally indestructible material at the time of its passage) shall be replaced with cars constructed of steel annually after June, 1913.

Wooden cars to which steel underframes are applied under this ruling shall, in addition to conforming to the standard construction specifications so far as relates to under construction, conform to section 24 of the same specifications, which provides that the section moduli of the vertical end members shall be not less than 65, distributed as stated in that section.

(*b*) When it is desired to rebuild wooden railway post office cars for use as apartment cars for operation in connection with steel or steel underframe cars, the provisions of paragraph (*e*) section 1, shall apply, and it should be understood that where steel underframes are applied, and the requirements of the paragraph referred to are not fully met, cars so constructed shall be regarded only as reinforced wooden cars and not acceptable for operation with steel or steel underframe cars adjoining or in trains in which a majority of the cars are of steel or steel underframe construction.

(*c*) If the floor plans of railway post office cars to be rebuilt conform substantially to floor plans in use immediately preceding the adoption of present standard plans, and the distribution facilities are substantially the same as provided by present standard plans, changes in interior arrangements will not be required
136 except in case of 25-foot apartment cars. (In 25-foot apartment cars, the location of water container and hopper should be made to conform to the present standard, and the space vacated by change in position of water container utilized for letter-package

boxes similar in construction to those shown in present standard drawings.)

(*d*) Where the floor plan is of an obsolete arrangement or the distributing facilities provided are materially deficient, as compared with present requirements, such changes should be made as will make cars conform substantially to present standards.

(*e*) In the reconstruction of wooden apartment cars which are to continue as wooden cars, it is required that they be sound in material and construction and preferably be constructed substantially in accordance with Plan No. 1 for wooden cars. They must at least be strengthened by application of antitelescoping features specified in Post Office Department Plan No. 1 for wooden railway post office cars, in connection with substantial buffer and end sill construction.

Section 3.—Inspection of New and Reconstructed Cars.

Inspection of Cars During Construction—Certificates of Construction.

(*a*) New full and apartment cars should be inspected twice and where possible three times during course of construction.

(*b*) First inspection should be made when underframe is complete and body framing in place, but before floor is laid or inside sheathing applied.

(*c*) Second inspection should be made while insulation is being applied and floor is being laid.

(*d*) Third and final inspection should be made when car is ready for delivery.

(*e*) Full report covering all inspections should be made on proper forms.

(*f*) A certificate, Form 5292, from railway companies, is required for all new full and apartment cars and all cars to which steel underframes are applied before such cars can be accepted for
137 service. These certificates are to be sent through division superintendents of Railway Mail Service, who will see that they are received and verified before cars are allowed to be put into service.

(*g*) Railway and car building companies must keep division superintendents Railway Mail Service fully advised as to proposed construction or reconstruction of full and apartment mail cars and the dates when such cars will be ready for inspection, in accordance with the requirements of this section.

(*h*) Division superintendents of Railway Mail Service in case of rebuilt wooden apartment cars, shall inform railway companies as to the extent to which such cars should be reconstructed.

(*i*) Cars being reconstructed should be twice inspected. The first inspection should be made when the framing of the superstructure is exposed, so it can be checked up and conformance with the specifications verified; the second and final inspection to be made when car is ready for delivery.

Section 4.—Withdrawal from the Full Railway Post Office Car Service by July 1, 1917, of Existing Wooden Full Cars.

Withdrawal of Existing Wooden Full Cars by July 1, 1917.

This has reference to the provisions of paragraph 1 of section 1332, Postal Laws and Regulations of 1913 (act of August 24, 1912).

At the time of the passage of this law there were, and at the present time there are, three classes of full railway post office cars in existence, namely, steel, steel underframe, and wooden cars. The law contemplates that all wooden full railway post office cars in existence at the date of its passage, August 24, 1912, shall be withdrawn and replaced with all-steel cars by July 1, 1917, and that after that date only all-steel cars and such steel underframe cars as were in existence or under contract or construction on August 24, 1912, shall remain in service.

138 Under a recent opinion of the Assistant Attorney General concerning the withdrawal of the wooden cars and their replacement with all-steel cars by July 1, 1917, the following procedure will fulfill the intent of Congress:

Between July 1, 1913, and June 30, 1914, not less than twenty-five per centum of the wooden cars in service on July 1, 1913, should be replaced with steel cars, so that on July 1, 1914, there shall remain in service not more than seventy-five per centum of the wooden cars which were in service on July 1, 1913. Similar substitutions should be made during the fiscal year ending June 30, 1915 and 1916, so that the number of wooden cars in service on such dates shall be not more than, respectively, fifty per centum and twenty-five per centum. The number of wooden cars thus remaining on hand July 1, 1916, should then be replaced by June 30, 1917, so that on July 1, 1917, all of the wooden cars will have been replaced with all-steel cars, and there shall be in the full railway post office car service only all-steel cars and such steel underframe cars as were in service or under contract or construction on August 24, 1912.

Section 5.—Operation.

Operation.

(*a*) Steel underframe cars may be operated in connection with steel cars.

(*b*) Wooden full or apartment cars must not be operated between adjoining steel or steel underframe cars, or between such cars adjoining and the engine.

(*c*) In the full railway post office car service all wooden cars must be constructed substantially in accordance with the department's Plan No. 1 for wooden cars. Additional wooden full cars accepted for the service since March 4, 1911, shall not be operated in a train in which a majority of the cars are of steel or steel underframe con-

struction (this has reference to wooden cars which had not been accepted on or prior to March 4, 1911).

(*d*) In the apartment-car service, in heavy trains operated on fast schedules, it is required that wooden cars be constructed
139 substantially in accordance with the department's Plan No. 1 for wooden cars. In no case shall the mail car be of less strength than a majority of the other cars in the train. When a majority of the other cars in the train are of steel or steel underframe construction the mail apartment car shall be of like construction.

(*e*) Mail cars, both full and apartment, whether of steel, steel underframe, or wooden construction, which have the letter case in the end shall not be operated with the letter end next to the tender of the engine where it is practicable to turn the cars so as to run the storage end forward.

Section 6.—Sanitary Features and Conditions.

Sanitary Features and Conditions.

(*a*) Hoppers so constructed as to permit the accumulation of matter on their sides will not be aceptable. The hoppers may be either flushing or dry. Where a dry hopper is used it shall have a double lid, large opening at top and bottom nearly straight sides, and a chute leading through and extending below floor line. The chute shall have an opening at the bottom of sufficient size, and be so placed, as to provide a straight drop and proper clearance, the bottom to be free from obstruction. In new installations the chute shall be equipped with an air deflector. (See section 10, specifications for fixtures.) Dry hoppers shall be provided with suitable deodorants and disinfectants. In all cars a suply of toilet paper shall be provided.

(*b*) Wash basins with tanks for wash water separate from drinking water are desired.

(*c*) Drinking-water containers must have the water separated from the ice, and must be so constructed as to permit of proper drainage and cleaning. (See section 12, specifications for fixtures.)

(*d*) The full and apartment cars, including drinking-water containers and hoppers, must be thoroughly cleaned each trip, and where cars are in continuous use more than 24 hours, not more than 24 hours must elapse without their being so cleaned. Under
140 the latter conditions the cleaning en route may be limited to cleaning the hopper (where the construction thereof makes it necessary) and providing fresh water and ice.

Section 7.—Lighting.

Lighting.

Light Failure.—A light failure is defined as the condition where for a period exceeding thirty minutes the primary lighting system fails to give sufficient illumination to permit distribution of mail

matter to be continued. Whenever the above condition obtains it will be reported as a total failure. If such failure is for thirty minutes or less, or if there is such diminution of light for any period that distribution is not necessarily stopped but is made with difficulty, a partial failure will be reported.

There should at all times be in the cars some means of providing light in the emergency where the regular lights fail. Where the car is not equipped with a secondary lighting system there should be in the car to meet such emergencies at least a suitable supply of candles and candle holders.

Section 8.—"No Admission" Notices.

"No Admission" Notices.

Two "No Admission" notices, properly framed, must be placed in full cars, and one such notice in apartment cars. These notices should be placed on end of paper boxes or on suitable wall location near side doors.

Transportation by Freight or Express.

Withdrawal of Postal Cards, etc., Before Weighing Periods. 1907, Mar. 2, 34 Stat., 1212. Transmission by Freight or Express Thereafter.

Sec. 1317, par. 9. The Postmaster General shall require, when in freightable lots and whenever practicable, the withdrawal from the mails of all postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture equipment, and other supplies for the postal service, except postage stamps, in the respective weighing divisions of the country, immediately preceding the weighing
141 period in said divisions, and thereafter such postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the postal service, except postage stamps, al all be transmitted by either freight or express.

Return of Empty Bags to the Mails in Emergency Cases. 1911, Mar. 4, 36 Stat., 1335. Payment for Transportation.

And the Postmaster General in cases of emergency, between November fifteenth and January fifteenth of any year, may hereafter return to the mails empty mail bags theretofore withdrawn there from as required by law, and for such times may pay for their railroad transportation out of the appropriation for inland transportation by railroad routes at not exceeding the rate per pound per mile as shown by the last adjustment for mail service on the route over which they may be carried, and pay for necessary cartage out of the appropriation for freight or expressage.

General Performance of Service.

Postmaster General to Decide what Trains Shall Carry Mails. 1879, Mar. 3, 20 Stat., 358.

Sec. 1336. The Postmaster General shall, in all cases, decide upon what trains and in what manner the mails shall be conveyed.

Mail to be Carried on Any Train. R. S., Sec. 400.

Sec. 1337. Every railway company carrying the mail shall carry on any train which may run over its road, and without extra charge therefor, all mailable matter directed to be carried thereon, with the person in charge of the same.

Note.

NOTE.—This section contemplates the carrying of mails on any train with or without an employee of the postal service in charge.

Mails to be Carried on Fastest Trains. 1884, July 5, 23 Stat., 156.

Sec. 1338. * * * If any railroad company shall fail or refuse to transport the mails, when required by the Post Office Department, upon the fastest train or trains run upon said road, said company shall have its pay reduced fifty per centum of the amount provided by law.

See section 1486 as to fines and deductions.

Post-office Inspectors, Agents, Supplies, etc.—to be Carried Without Specific Charge.

Sec. 1339. Railroad companies are required to convey upon any train, without specific charge therefor, all mail bags, post-
142 office blanks, stationery, supplies, and all duly accredited agents of the Post Office Department and post-office inspectors upon the exhibition of their credentials.

Transfer at Place of Wreck or Washout.

Sec. 1340. Whenever a railroad company finds it necessary to transfer at the place of a wreck or washout, its officials and employees will be expected to see that the mails and railway postal clerks are promptly transferred, and every possible convenience furnished the clerks for working their mails.

Specific Requirements of Service. Apartments in Cars.

Sec. 1341. The rate of compensation for the transportation of mail on railroads is computed upon the average weight of mail per

day carried the whole length of the route. It is essential that the mail be carried with due frequency and speed; also that suitable apartments, equipped with necessary fixtures and furniture, properly lighted and heated, provided with ice water, and built in accordance with plans and specifications furnished by the General Superintendent of Railway Mail Service, shall be provided for railway postal clerks to accompany and distribute the mail when required.

Quarters at Transfer Stations—How Equipped.

2. Railroad companies, at stations where transfer clerks are employed, shall provide suitable and sufficient rooms for handling and storing the mails, and without specific charge therefor. These rooms shall be lighted, heated, furnished, supplied with ice water, and kept in order by the railroad company.

Department to Determine Requirements.

3. The specific requirements of the service as to due frequency and speed, space required on trains or at stations, fixtures, furniture, etc., shall be determined by the Post Office Department and made known through the General Superintendent of Railway Mail Service. See section 1330 as to railway post-office cars.

Record of Pouches.

Railroad Companies to Keep Record of Pouches.

Sec. 1342. Railroad companies shall require their employes who handle the mails to keep a record of all pouches due to be received or dispatched by them, and to check the pouches at the time they are received or dispatched, except that no record need be kept of a single pouch from a train or station to the post office or from the post office to a train or station which, in regular course, is the only pouch in the custody of the company's employees at that point while it is being handled by them. This is not to be construed as relieving railroad companies from having employees on trains keep and properly check a record of all closed pouches handled by them, without exception.

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Shortage Slips.

2. In case of failure to receive any pouch due, a shortage slip shall be made out, explaining cause of failure, and forwarded in lieu of the missing pouch. Specific instructions in regard to the use of shortage slips will be given by the General Superintendent of Railway Mail Service.

Irregularities to be Reported.

3. Every irregularity in the receipt and dispatch of mail shall be reported by the employee to his superintendent promptly, and if

a probable loss of or damage to mail is involved, or if the cause of failure to receive a pouch is not known, the report should be made by wire, and the superintendent shall notify the division superintendent of Railway Mail Service without delay. A copy of the employee's report shall be attached to and become a part of the permanent pouch record.

Train Pouch Records. Station Pouch Records.

4. Train pouch records shall be kept on file at the headquarters of division superintendents of railroad companies for at least one year immediately following the date the mail covered by them was handled, and shall be accessible there to post-office inspectors and other agents of the Post Office Department. Station pouch records shall be kept on file at the station to which they apply for at least one year immediately following the date the mail covered by them was handled, and shall be accessible there to post-office inspectors and other agents of the Post Office Department.

Records Subject to Examination.

5. Railroad companies shall require their employees to submit pouch records for examination to post-office inspectors and
144 other duly accredited agents of the Post Office Department upon their request and exhibition of credentials to such employees.

Note.—Pouch Records—Forms for Keeping.

NOTE.—It appears that in some instances the blank forms used by railroad companies for the purpose of keeping a record of pouches handled at stations and on trains by their employees have not provided separate spaces for checking the receipt and dispatch of the pouches, resulting in a pouch being checked on the record only once to cover both the receipt and dispatch, even though the dispatch be several hours after the receipt. Section 1342, Postal Laws and Regulations, provides that the pouches shall be checked on the record at the time of receipt or dispatch. There are shown below sample forms (reduced) which provide a separate space for checking the receipt and dispatch of pouches. These forms are numbered 1, 2, and 3, being for monthly, weekly, and daily record, respectively, and may be used by either station employees or trainmen. It is preferred that the records be kept on forms similar to the samples, but this is not required if a company desires to use any other form which describes each pouch as fully and provides a separate space for checking the receipt and dispatch of each pouch.

Sample Forms of Record of Mail Pouches to Be Kept by Railroad Companies.

(Form 1.)

Record of locked mail pouches handled during the month of....., 191.., at.....Station, or on train No....., from..... to .....

Pouch.	Days of the month.								
	1	2	3	4	5	6	7	8	9
Made up by....Received from ...	....	....	....	....	....	....	....	....	....
Labeled to.....Delivered to	....	....	....	....	....	....	....	....	....
Made up by....Received from ...	....	....	....	....	....	....	....	....	....
Labeled to.....Delivered to	....	....	....	....	....	....	....	....	....
Made up by....Received from ...	....	....	....	....	....	....	....	....	....
Labeled to.....Delivered to	....	....	....	....	....	....	....	....	....

Irregularities in the handling of the mails (state date and full details) :.....
.....

145 (Form 2.)

Record of locked mail pouches handled during the month of....., 191.., at.....Station, or on train No....., from..... to .....

Pouch.	Days of the week.						
	Sun.	Mon.	Tue.	Wed.	Thur.	Fri.	Sat.
Made up by....Received from.....	.....	.....	.....	.....	.....	.....	.....
Labeled to.....Delivered to	.....	.....	.....	.....	.....	.....	.....
Made up by....Received from.....	.....	.....	.....	.....	.....	.....	.....
Labeled to.....Delivered to	.....	.....	.....	.....	.....	.....	.....
Made up by....Received from.....	.....	.....	.....	.....	.....	.....	.....
Labeled to.....Delivered to	.....	.....	.....	.....	.....	.....	.....

Irregularities in the handling of the mails (state date and full details) :.....
.....

(Form 3.)

Record of locked pouches handled.....191.., at.....Station, or on train No....., from..... to .....

Made up by.....Received from	.....
Labeled to.....Delivered to	.....
Made up by.....Received from	.....
Labeled to.....Delivered to	.....

Irregularities in the handling of the mails (state date and full details) :.....
.....

Shortage Slips at Joint Stations.

Shortage Slips—Furnishing of at Joint Stations.

In order to secure uniformity at joint stations in the furnishing of shortage slips in lieu of pouches due from a train of one company to a train of another company where for any reason the pouch is not received in time to make its regular connection, the following rules apply to the handling of shortage slips under such circumstances:

1. Where the station force handling the mail is employed jointly by the two companies:

(*a*) If under the schedule the connection is immediate, that is, where the train due to receive the pouch is at the station when the pouch arrives, the company operating the train from which the pouch is due to be received will be charged with the duty of
146 seeing that the shortage slip is made out and delivered into the train due to receive the pouch.

(*b*) If under the schedule the connection is not immediate, the company operating the train due to receive the pouch will be charged with the duty of seeing that the shortage slip is made out and delivered to the train.

2. Where a separate force is employed by each company for handling the mail:

(*a*) If under the schedule the connection is immediate, the company operating the train from which the pouch is due to be received will be charged with the duty of seeing that the shortage slip is delivered into the train that is due to receive the pouch.

(*b*) If under the schedule the connection is not immediate, the employee of the company operating the train from which the pouch is due to be received will make out a shortage slip and deliver it to the employee of the company operating the train due to receive the pouch, who will in turn deliver it into the train. In case of failure of the first-mentioned employee to make out and deliver a shortage slip to the second, the latter will make out and deliver a shortage slip to the train and report such failure on the part of the first-mentioned employee to his superintendent, who will in turn report the delinquency to the division superintendent of Railway Mail Service.

It is suggested that it would be well to print Sec. 1342, Postal Laws & Regulations of 1913, and the above rules concerning the handling of shortage slips, along with any other instructions regarding the handling of the mails which the company may consider desirable, on the back of the pouch record blanks, for the information and guidance of the company's employees.

Railroad Companies to Furnish Time-tables. Telegraphic Notice of Change of Trains, When.

Sec. 1348. Railroad companies shall forward time-tables to the division superintendents and local officers of Railway Mail Service in time to reach them 24 hours before taking effect. If for any reason

a train is to be annulled or train service temporarily curtailed or suspended, telegraphic notice shall be immediately given to
147 the division superintendent and other local officers of the Railway Mail Service.

Notice of Schedules to Postmasters.

2. At places where railroad companies have agents, such agents shall notify the postmasters as soon as possible after receipt of any notice of change in schedule of mail trains.

Note.

NOTE.—Railroad companies should inform division superintendents of Railway Mail Service of any proposed or contemplated changes in the schedules of mail trains.

Superintendents to Notify Railroad Companies of Change in Pouch Lists.

Sec. 1344. Division superintendents shall promptly notify the proper officers of railroad companies of any changes in the list of closed pouches to be handled by railroad employees.

Letter Boxes at Railroad Depots—Companies May Place, When.

Sec. 1345. When it appears that the public convenience will be subserved, the General Superintendent of Railway Mail Service may authorize railroad companies to place letter boxes in their depots for the receipt of mail matter other than that for local delivery.

Receipt and Delivery of Mails.

Receipt and Delivery of Mails by Railroad Companies—at Terminal Offices—at Intermediate Offices—Notice of Discontinuance of Agency—Notice of Removal of Station Site.

Sec. 1346. Every railroad company is required to take the mails from, and deliver them into, all terminal post offices, whatever may be the distance between the station and post office, except in cities where other provision for such service is made by the Post Office Department. In all cases where the department has not made other provision, the distance between terminal post office and nearest station is computed in and paid for as part of the route.

2. The railroad company must also take the mails from and deliver them into all intermediate post offices and postal stations located not more than 80 rods from the nearest railroad station at which the company has an agent or other representative employed, and the company shall not be relieved of such duty on account of the discontinuance of an agency without thirty days' notice to the department. (See note below.)

148 NOTE.—In analogy with this requirement respecting notice in case of removal of agent, the department requires the company to give a like notice in case of removal of station to a point outside of the 80-rod limit.

When Department will Provide for Receipt and Delivery.

3. The department will provide for the carriage of mails to and from intermediate post offices and postal stations located more than 80 rods from the nearest railroad station; and also to and from intermediate post offices and postal stations located 80 rods or less from the railroad station when the railroad company has no agent or other representative employed at such station.

Measurement of Distance between Post Office and Station.

4. In all cases the distance between the railroad station and the post office or postal station shall be measured by the shortest route open to public travel, avoiding angles, from the nearest door of the baggage room to the nearest door of the post office building where the receipt and delivery of the mails is practicable. In case there is no baggage room or station the measurement shall be made from the middle of the station platform where mails are exchanged. The route need not be a way regularly dedicated to public use; and if it be over private property, no prohibition against the Government will be recognized which shall not also have been made and enforced against the general public.

Definition of "Agent" or "Representative."

5. Any person acting for an advantage to himself or another, by authority or consent of the railroad company and representing in any manner the interests of the company or railroad in its business transactions with the public will be regarded as the company's agent or representative.

Transfer between Connecting Trains—How Made

Sec. 1347. At connecting points where railroad stations are not over 80 rods apart a company having mails on its trains to be forwarded by a connecting train will be required to transfer such mails and deliver them into the connecting train—first, where the two companies have agents or representatives employed, and, if the connection is not immediate, to deliver them to the agent of the company
149 to be properly dispatched by the trains of said company; and, second, where the company having the mails for dispatch makes transfer of baggage or passengers. Transfers of mail between connecting trains of steam-railroad routes and cars of electric-railway routes will be required to be made by the respective companies operating the routes, where the railroad company employs an agent

and its station is adjacent and readily accessible to the tracks of the electric-railway company and the connection is immediate, except in large cities, where other provision for the service may be made by the Post Office Department. Where the tracks of electric-car routes are contiguous, transfers of mail between the cars will be required of the operating companies when practicable and the connection is immediate.

Employees of Railroads—Not Postal Employees—Qualifications of.

Sec. 1348. At places where railroad companies are required to take the mails from and deliver them into post offices or postal stations or to transfer them to connecting railroads, the persons employed to perform such service are agents of the companies and not employees of the postal service, and need not be sworn; but such persons shall be more than 16 years old and of suitable intelligence and character. Postmasters shall promptly report any violation of this requirement.

Advance Delivery by Companies—To Be Made When Necessary.

Sec. 1349. When it is desirable to have mails taken from the post office or postal station to train at a terminal point where the terminal service devolves upon the company, in advance of the regular time of closing mails, the company will be required to make such advance delivery as becomes necessary by the requirements of the service.

When Messenger Can Not Wait For Delayed Train—What Company To Do.

Sec. 1350. When a messenger employed by the Post Office Department can not wait for a delayed train without missing other mails the railroad company will be required to take charge of and dispatch the mails for the delayed train, and will be responsible for the inward mail until delivered to the messenger or other authorized representative of the department.

150 When Mail Train Is Held to Be "Indefinitely Late."

NOTE.—It is held that a mail train shall be regarded as "indefinitely late" in any of the following cases:

1. When the company's agent can not or will not give the mail messenger, or other carrier of the mail, definite information as to the time at which the train will arrive.
2. When the train is reported as being more than two hours late.
3. When the train is actually more than two hours late, although reported to arrive within two hours of schedule time.

The Proper Action to Be Taken.

In the first and second of the above cases the messenger need not wait for the arrival of the train beyond its schedule time of arrival, but should deliver the mail to the company's agent, or other repre-

sentative, whose duty it will then be to dispatch the same by proper train and to retain custody of the incoming mail, if any, until it is called for by the messenger.

In the third case the messenger should wait for the arrival of the train, but not more than two hours; and, if at the expiration of two hours the train has not arrived, he should turn the mail over to the agent, whose duty will then be the same as in the other cases.

At any point where there is not a telegraph office, or other means by which the lateness of the train may be ascertained, the messenger may not turn the mail over to the agent until two hours after the train is due to arrive.

In all cases it must be distinctly understood that when a mail is regularly turned over to the company's agent for dispatch the company becomes responsible for its proper handling, and that the messenger must call for and deliver the incoming mail to the post office immediately after the arrival of the train, unless the train arrives at a late hour of night and the post office is closed, when the incoming mail may be disposed of as provided for in section 1351.

Places at which regulation or screen wagon service is maintained are excepted from the operation of these rules.

The above ruling is not intended to modify section 1350.

151 Arrival of Mail at Late Hour at Night. Care of Mails.

Sec. 1351. Whenever the mail on any railroad route arrives at a late hour of the night or at a time when the Government messenger is not on hand to receive it, the railroad company must retain custody thereof by placing the mail in a secure and safe room or apartment of the depot or station until called for or until the following morning, when it must be delivered at the post office, or to the mail messenger employed by the Post Office Department, at as early an hour as the necessities of the post office may require.

Dispatch of Mails at Late Hour at Night. Care of Mails.

Sec. 1352. When a train departs from a railroad station in the nighttime later than 9 o'clock, and it is deemed necessary to have the mail dispatched by such train, the division superintendent of Railway Mail Service shall, where mail is taken from and delivered into the post office by the railroad company, request the company, or where a mail messenger or carrier is employed by the Post Office Department, shall direct him, to take the mail to the railroad station at such time as will best serve the interest of the mail service. Such mail shall be taken in charge by the agent or other representatives of the railroad company, who shall be required to keep it in some secure place until the train arrives, and then see that it is properly dispatched.

Notice of, to Company.

2. The division superintendent of Railway Mail Service shall give reasonable advance notice to the proper officer of the railroad com-

pany, in order that the agent or representatives of the company may be properly instructed.

Mail Cars to Be Accessible.

Sec. 1353. Railroad companies will be expected to place their mail cars at points accessible to mail messengers or contractors for wagon service. If cars are not so placed the companies will be required to receive the mails from and deliver them to the messengers or contractors at points accessible to the wagon of the messenger or contractor.

Railroad Company to Furnish Men. When.

NOTE.—At points where a considerable amount of mail is to be handled, the railroad company must furnish the men neces-
152 sary to handle the mails, to load the same in or take them out of the cars, under the direction of the transfer clerk or the clerk in charge of the car.

Mail to Be Placed in Cars. When. Railroad Employees Not Allowed in R. P. O. Cars. Except.

Mail should never be placed in a postal car unless there is a clerk on duty to receive and care for it.

Conductors and other railroad employes are not allowed to enter railroad post offices except in the discharge of their official duties, and when they have attended to such duties they should immediately leave the car.

Mail Trains Must Not Leave When Mails Are Being Loaded. Exceptions.

Sec. 1354. A mail train must not pull out and leave mails which are in process of being loaded on the car of which the conductor or trainman has information are being trucked from wagons or some part of the station to the cars: Provided, That where the holding of a train for the loading of mail from delayed connection would seriously delay the train, the department may authorize its departure when the letter and daily newspaper mails have been loaded if a subsequent available train is due to depart within a reasonable time: Provided further, That at points where trains are held for mail from connections during a weighing period upon the results of which adjustments of pay on the routes are based, the railroad companies will be required to maintain the conditions with respect to holding of trains that obtained during such weighing period.

Note.

NOTE.—The provision that where the holding of a train for the loading of the mail from a delayed connection would seriously de-

lay the train, the department may authorize its departure when the letter and daily paper mails have been loaded if a subsequent available train is due to depart within a reasonable time, contemplates that specific authorization for the departure of a train under such circumstances shall be issued by the department. Therefore a company should not permit a train to depart under this provision unless it has received specific authority from the department to do so. The department will consider the facts in the different cases as they arise and issue the necessary authorization for the future departure
153 of a train where under all of the circumstances surrounding the particular case such authorization appears to be proper.

Mail Cranes to Be Furnished by Companies.

Sec. 1355. At all points at which trains do not stop where the Post Office Department deems the exchange of mails necessary, a device for the receipt and delivery of mails satisfactory to the department must be erected and maintained; and pending the erection of such device the speed of trains must be slackened so as to permit the exchange to be made with safety.

Reduction of Speed or Stoppage.

2. Where the department deems it necessary to the safe exchange of the mails the railroad company will be required to reduce the speed or stop the train.

Lights on Cranes.

3. When night mails are caught from a crane the railroad company shall furnish the lantern or light to be attached to the crane and keep the same in proper condition, regularly placed and lighted; but if the company has no agent or employee at such station, the company shall furnish the light, which shall be cared for and placed by the department's carrier.

NOTE.—Paragraph 3 contemplates that a light shall be displayed for the guidance of clerks when delivery only is made, as well as when mails are caught.

Signal of Approach of Train.

4. The engineer of a train shall give timely notice, by whistle of other signal, of its approach to a mail crane.

Mail Catchers and Cranes. When Used.

Sec. 571. Mail catchers and cranes will be used for the purpose of exchanging mails between post offices and railway post offices when trains do not stop at the stations.

Preparation and Hanging of Pouches on Mail Cranes.

2. At such stations mail pouches for railway post offices shall be hung on the mail cranes not exceeding 10 minutes before the time of arrival of the train.

Special Pouches to Be Used.

3. Canvas mail pouches, provided specially for catcher exchanges (see secs. 1491 and 1495), and no others, shall be used.

Arrangement of Mail in Pouch.

4. When only a small amount of mail is to be dispatched, the pouch should be strapped tightly around the center and the mail placed in the top of the pouch, but when a large mail is to be
154 sent it shall be divided about equally between top and bottom. The strap should be buckled around the center of the pouch. In case the strap is missing, the middle of the pouch should be tied. The pouch should be hung lock end down.

Light on Crane at Night.

5. When the exchange of mails occurs at night and a lamp is not affixed to the crane and kept in order as provided in section 1355, the division superintendent of Railway Mail Service should be notified.

NOTE.—Where the pouch is hung on a mail crane either during the day or night, the person whose duty it is to hang the pouch on the crane must remain in sight of the pouch until it is caught. If there is a failure to catch the pouch it must be taken to the post office, and the postmaster should report the failure to the division superintendent Railway Mail Service.

Delivery of Newsdealer Packages Outside Mail.

Second-class Matter. R. S., sec. 3889. Postmaster General May provide for Receipt and Delivery of, by Postal Clerks.

Sec. 1613. The Postmaster General may provide by order the terms upon which railway postal clerks may receive from publishers or any news agents in charge thereof, and deliver the same as directed, if presented and called for at the mail car or steamer, packages of newspapers and other periodicals not received from or intended for delivery at any post office.

Can only Be Accepted by Clerks When Accompanied by Certificate of Postmaster.

2. Railway postal clerks may receive newspapers and periodicals from publishers and news agents only when accompanied with a

certificate from the postmaster at the office of publication that the postage has been paid.

Outside Delivery to News Agents Only.

3. Second-class matter marked to be delivered outside the mails shall be so delivered only when addressed to news agents, and should be treated according to instructions upon the package.

Notice on Wrapper.

4. Publishers shall have printed in bold type on wrapper of mail packages for outside delivery the words "U. S. mail for outside delivery at publisher's risk."

On Trains to Which no Railway Postal Clerk Is Assigned.

5. When newsdealer packages are forwarded on trains upon which no railway postal clerk is assigned, the baggageman shall de-
155 liver the packages outside of the mail at place shown in the address, and while in his custody they will be considered as mail matter.

Baggagemen Not to Receive Direct from Publishers.—Except.

6. Baggagemen shall not receive second-class mail directly from the publisher on postmasters' certificates unless specially authorized to do so by the department through the division superintendent.

Credit to Railroad Company Carrying Packages.

7. Packages for delivery outside of the mail, when handled and delivered by railroad baggagemen will be duly weighed and credited to the railroad company carrying them, the same as other mail matter.

Handling of Fragile and Bulky Parcel Post Mail.

Parcel Post Mail—Delivery of—at Post Offices Where No R. P. O. Train Stops.

Parcels marked "Fragile," or which are too bulky to be contained in the mail bags, should not be delivered from or dispatched to moving trains, but shall be delivered from or dispatched to trains which stop at station or mail crane. If no R. P. O. train is scheduled to stop at a post office, such parcel addressed thereto shall be forwarded via the nearest convenient railroad station at which the R. P. O. train stops, to be sent to destination by a local train.

Trains to Stop on Signal, When.

All railroad companies carrying the mails shall designate at least one scheduled train in every 24 hours which will stop at any post

office when necessary, either regularly or on signal by the postmaster, or notice to the conductor by the railway postal clerk or baggageman.

At Post Offices Served by Mail Cranes.

Where mail cranes have been erected in close proximity to post offices, and not more than one mile from station, such packages addressed thereto, or mailed therein, shall be handled via the station, provided the railroad company employs an agent at that point. Where a post office is supplied by mail crane at a point more than one mile from a station, or near a station where no agent is employed, the mail crane shall be considered a point at which some designated train must stop on flag.

Postmasters will be notified by the division superintendent Railway Mail Service as to the proper dispatch of such packages.

156 Trains on which Handled.

Division superintendents will arrange with railroad companies as to the train on which such packages will be handled and instruct railroad companies regarding the proper treatment to be given them.

Railroads to Report Failures. Delays, when to be Reported.

Sec. 1484. Railroad companies must furnish monthly, to the division superintendent of Railway Mail Service, statements in the form prescribed by the Post Office Department, and affirmed under the oath of their respective principal transportation officers, showing by routes all failures to operate trains carrying mail, and, similarly, reports showing all failures to operate full railway post-office cars of not less than the dimensions authorized and of the character and in the condition required; also, when called upon to do so, railroad companies will be required to furnish monthly statements, certified as above, of all delays, and their causes, to trains which the department regards as being of special importance as mail trains.

Deductions and Fines—Authorization of.

Deductions and Fines for Failures and Delinquencies, R. S., Sec. 3962, Authority for.

Sec. 1486. The Postmaster General may make deductions from the pay of contractors, for failures to perform service according to contract, and impose fines upon them for other delinquencies. He may deduct the price of the trip in all cases where the trip is not performed; and not exceeding three times the price if the failure be occasioned by the fault of the contractor or carrier.

Note.

See section 1338 as to reduction of pay for refusal of railroad company to carry mails on fastest trains; section 1333, as to reduction of pay for refusing to furnish railway post-office cars or equip them.

Deductions.

Deductions, How and for What Made.

Sec. 1488. Deductions * * * will be made within the limit fixed by law (see sec. 1486), the amount thereof to depend upon the nature or frequency of the failure and the importance of the mail.

157 Railroad Service.

Compensation Apportioned Among Trains.

2. The compensation for service on each route shall be apportioned, as nearly as practicable, among the several trains carrying mail, according to the average weight of mail carried by each train.

Failure to Perform Trip.

3. Deductions will be made for failure to perform any trip, or a part thereof, on the basis of the mileage and the average weight of the mail carried by the train.

What Constitutes Failure.

4. A train will be considered as failing to perform service when it becomes 24 hours or more late, and will be charged with failure from the point where it became 24 hours late to the end of its run, or to the point at which it becomes less than 24 hours late.

Special Trains, When Credit Allowed for.

5. If a train carrying mail is made up, and covers any part of the failing train's run within the 24-hour limit, and is in addition to the regularly scheduled trains performing mail service, such service will be credited in lieu of the train which is 24 hours or more late.

Deduction, Amount of, How Determined.

6. Unless it is shown to the satisfaction of the Post Office Department that the failure to operate a train or trains was unavoidable, the deduction will be made at pro rata, or 100 per cent. of the amount due to be earned by them between the points of failure. If the failure was unavoidable, the route reopened without unnecessary delay and the mails not diverted, the mail service being reestablished promptly, 50 per cent. of said amount will be deducted. Where, however, there has been a total suspension of mail service over all or any part of a route for a period of six days or more, deduction will be made for the entire period at 100 per cent. of pro rata, without regard to the cause of the failure or diversion of mails.

Mails Forwarded Over Other Lines.

7. In case of an interruption of sufficient duration to make it necessary for the Post Office Department to forward the mails over other lines, no compensation will be allowed.

Failures to Run Postal Cars.

8. A pro rata deduction will be made for all failures to run railway post-office cars, the deduction being made for the actual mileage omitted.

158 Car Not Run on Regular Train.

9. When a car is not run on its regular train, but is run later on another train and in use for mail service—that is, not deadheaded—no deduction will be made.

Detours of Cars.

10. No deduction will be made for detours of railway post-office cars, when they are used during such detours by the Post Office Department.

Failure to Provide Local Service.

11. When a train is detoured a deduction will be made, based upon the estimated value of the local service omitted—that is, the service between the points of detour; but in no case will the deduction be in excess of 50 per cent. of the value of the train's service between such points. If, however, satisfactory provision is made for such local service, no deduction will be made.

Trains of Special Importance to Observe Schedule.

12. Trains which the department regards as being of special importance as mail trains will be subject to deductions for failure to arrive at junction and terminal points at the time fixed by schedule unless held for mail connections, or unless satisfactory explanation be given in due time.

Applications for Remission; When to be Filed.

13. Application from railroad companies for remission of deductions made from their compensation for carrying mail will not be considered unless filed, with evidence, in the office of the Second Assistant Postmaster General within six months from the date of notice by the Post Office Department to the railroad company that such deduction has been ordered.

Fines.

General Service.

Fines: How and for What Imposed.

Sec. 1489. Fines will be imposed, unless satisfactory excuse be made in due time, for each of the following delinquencies on the part of a contractor, to wit:

Failure to Take or Deliver Mail.

(a) Failure to take the mail, or any part of it, from a post office, or to deliver it thereto, or to deliver it immediately upon arrival.

Damage to Mail.

(b) Suffering the mail, or any part of it, to become wet, lost, injured, or destroyed, or conveying or keeping it in a place
159 or manner that exposes it to depreciation, loss, or injury.

Refusal to Transport Mail.

(c) Refusing, after demand, to transport mail by any coach, car, boat, or other conveyance which the contractor runs or is concerned in running on the route.

Leaving Mail for Passengers, etc.

(d) Leaving or putting aside the mail, or any part of it, for the accommodation of passengers, baggage, express, freight, or other matter.

Failure to Observe Schedule.

(e) Habitual failures to observe schedule.

Other Delinquencies.

(f) Other delinquencies or violations of the terms of the contract, or the requirements or regulations of the Post Office Department.

Postmaster General to Fix Amount of Fine.

2. The fine will in each case be such sum as the Postmaster General may impose, in view of the gravity of the delinquency, and will be deducted from the contractor's pay for the service on the route on which the delinquency occurred.

Fines in Particular Classes of Service.

Sec. 1490. In addition to the foregoing general causes, fines will be imposed for the following delinquencies in the different classes of service, to wit:

Railroad, Electric, and Cable Car Service.

Leaving Mail.

(*a*) Leaving mail which arrives at the station before the departure of the train or car for which it is intended.

Forwarding of Delayed Mails.

(*b*) Failure to use the first practicable means of forwarding mail which is delayed en route.

Failure to Furnish Apartments in Cars..

(*c*) Failure to furnish suitable apartments when required in which to distribute the mail.

Failure to Sound Signal.

(*d*) Failure to sound proper signal when approaching mail crane.

Failure to Furnish Proper Accommodations in Depots.

(*e*) Failure to furnish proper accommodations for the handling, storage, and, if necessary, the distribution of mails in depots.

Establishment of Private Express for Conveyance of Letters Prohibited—Exceptions.

Conveying Mail by Private Express. 1909, Mar. 4, 35 Stat., 1123. Punishment. Proviso. Delivery to Post Office, etc., Allowed.

Sec. 1289. Whoever shall establish any private express for the conveyance of letters or packets, or in any manner cause or
160 provide for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place, to any other city, town, or place, between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both: Provided, That nothing contained in this section shall be construed as prohibiting any person from receiving and delivering to the nearest post office, postal car, or other authorized depository for mail matter, any mail matter properly stamped.

When Conveyance by Private Persons is Lawful. 1909, Mar. 4; 35 Stat., 1124.

Sec. 1290. Nothing in this chapter (Criminal Code, chapter eight, offenses against the Postal Service) shall be construed to prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only.

When Letters May be Carried out of the Mail. R. S., Sec. 3993—in Stamped Envelopes. Suspension of this Section.

Sec. 1291. All letters inclosed in stamped envelopes, if the postage stamp is of a denomination sufficient to cover the postage that would be chargeable thereon if the same were sent by mail, may be sent, conveyed, and delivered otherwise than by mail, provided such envelope shall be duly directed and properly sealed, so that the letter can not be taken therefrom without defacing the envelope, and the date of the letter or of the transmission or receipt thereof shall be written or stamped upon the envelope. But the Postmaster General may suspend the operation of this section upon any mail route where the public interest may require such suspension.

Note.

NOTE.—"Stamped envelopes" means Government stamped envelopes.

Transporting Persons Unlawfully Conveying Mail. 1909, Mar. 4; 35 Stat., 1124. Penalty.

Sec. 1292. Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or other vehicle or vessel, shall knowingly convey or knowingly permit the conveyance of any person acting or employed as a private express for the conveyance of letters or packets, and
161 actually in possession of the same for the purpose of conveying them, contrary to law, shall be fined not more than one hundred and fifty dollars.

Sending Letters by Private Express. 1909, Mar. 4; 35 Stat., 1124. Penalty.

Sec. 1293. Whoever shall transmit by private express or other unlawful means, or deliver to any agent thereof, *or* deposit or cause to be deposited at any appointed place, for the purpose of being so transmitted, any letter or packet, shall be fined not more than fifty dollars.

Carrying of Letters Outside of Mail by Common Carriers, etc.—Exceptions.

Carrying Letters Out of the Mail Over Post Routes. 1909, Mar. 4, 35 Stat., 1124. Penalty.

Sec. 1294. Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city, town, or place to any other city, town, or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the carrier, or to some article carried at the same time by the same stagecoach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars.

Letters Which May be Carried by Common Carriers Outside Mail.

2. A railroad or steamboat company or other common carrier may carry outside of the mails letters written and sent by its officers and agents which relate to its business only, without inclosing the same in stamped envelopes. Such letters may be to other of such carriers' officers and agents, to those of connecting lines, or to anyone else, so long as no other carrier intervenes.

For Connecting Lines.

3. Letters of a company or carrier addressed to officers or agents of a connecting line on business relating to such company or carrier and delivered to an agent of the latter at the point of connection may be carried, and such carriage continued by the connecting company or carrier.

For Eating Houses.

4. Letters written by a railroad company and addressed to the manager of an eating house operated by such company,
162 or written by him and addressed to the company, may be carried.

Letters Which Can Not Be Carried.

5. No company or carrier, or any officer or employee thereof, may carry letters which are neither written by the company or carrier, nor addressed to it. The fact that letters relate to through business over the lines of all companies or carriers transporting the same does not warrant a company in carrying such letters from one of its connecting lines to another.

Railway Systems Carrying Letters Outside Mail, Right of Individual Companies and Not of System.

6. Where companies or corporations operating railroads are united as a system of railways the right to carry letters outside of the mail without payment of postage remains as an appurtenant of the individual companies or corporations composing the system, and does not by reason of the union into a system become the right of the system.

Offenses.

Vehicles, etc., Claiming to Be Mail Carriers. 1909, Mar. 4; 35 Stat., 1124. Punishment.

Sec. 1711. It shall be unlawful to paint, print, or in any manner to place upon or attach to any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, not actually used in carrying the mail, the words "United States Mail," or any words, letters, or characters of like import; or to give notice, by publishing in any newspaper or otherwise, that any steamboat or other vessel, or any car, stagecoach, vehicle, or other conveyance, is used in carrying the mail, when the same is not actually so used; and every person who shall violate, and every owner, receiver, lessee, or managing operator thereof, who shall cause, suffer, or permit the violation of any provision of this section, shall be liable, and shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

Deserting the Mail. 1909, Mar. 4; 35 Stat., 1126. Punishment.

Sec. 1714. Whoever, having taken charge of any mail, shall voluntarily quit or desert the same before he has delivered it into the post office at the termination of the route, or to some known mail carrier, messenger, agent, or other employee in the postal service au-
163 thorized to receive the same, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

Fraudulently Increasing Weight of Mail. 1909, Mar. 4; 35 Stat., 1134. Punishment.

Sec. 1689. Whoever shall place or cause to be placed any matter in the mails during the regular weighing period, for the purpose of increasing the weight of the mail, with intent to cause an increase in the compensation of the railroad mail carrier over whose route such mail may pass, shall be fined not more than twenty thousand dollars, or imprisoned not more than five years, or both.

NOTE.—For other instances of offense against the Government herein referred to, see sections 1289, 1292, 1293, and 1294.

Examination of Mail Cars by Interstate Commerce Commission Inspectors.

The act of May 27, 1908 (35 Stat., 325), requires all inspectors employed by the Interstate Commerce Commission for the enforcement of the act of March 2, 1893 (27 Stat., 531), entitled an "Act to promote the safety of employees and travelers upon railroads," to make examination of the construction, adaptability, design, and condition of all mail cars used on any railroad in the United States and make report thereon, a copy of which report shall be transmitted to the Postmaster General.

Communications.

All communications relative to the rate of pay for railroad service, including those relative to the settlement of accounts, should be addressed to the Second Assistant Postmaster General (Division of Railway Adjustments).

164 (The Public Service Commission of the Commonwealth of Pennsylvania. C. P. Docket No. 489, 1915 (year). Res. Exhibit No. 4. Hearing held 12/21/15 (date). H. F. Jolly, Reporter.)

489, #4.

Post Office Department.

Specification for the Construction of Steel Full Postal Cars.

(Approved Mar. 28, 1912. Revised to Mar. 17, 1915.)

General.

Section 1.—Type.

Postal cars may be built according to any of the following types of construction:

I. Heavy center-sill construction, the center sills acting as the main carrying member.

II. Side-carrying construction, the sides of the car acting as the main carrying members, having their support at the bolsters.

III. Underframe construction in which the load is carried by all the longitudinal members of the lower frame. The superstructure framing shall be of steel.

IV. Combination construction in which the side frames carry a part of the load, transferring same to the center sills at points remote from the center plate for the purpose of utilizing uniform center-sill area.

Steel castings may be used as parts of the underframe in any of the above types.

Section 2.—Materials.

(*a*) All rolled-steel plates and shapes used in the car framing shall be made by the open-hearth process.

(*b*) The physical and chemical properties of all material used in the car framing shall be in accordance with the latest standard specifications of the American Society for Testing Materials, as follows: The standard specification for structural steel for cars; the standard specification for wrought iron, for iron bars and plates, and the standard specifications for steel castings.

Section 3.—Workmanship.

All workmanship throughout the car shall be first class. The jointing of the car framing shall be made so that the structure as a whole shall be built to dimensions specified, and all joints exposed to the weather shall be made tight against leakage.

Section 4.—Live Loads.

(*a*) The car body shall be designed to carry the specified live load in addition to its own dead weight under service conditions. Where no live load is specified by the railroad company, the maximum capacity of car, as determined by journal loads given in section 36, shall be used as a basis for calculations.

(*b*) For distributing cars the following shall be assumed as the minimum live-load capacity: 40-foot cars, 10,000 pounds; 50-foot cars, 15,000 pounds; 60-foot cars, 20,000 pounds. Where postal cars are used for storage cars or under unusual load conditions, live-load capacity shall be from 40,000 to 50,000 pounds, depending upon the character of the mail to be handled.

Section 5.—Buffing.

The maximum end shock due to buffing shall be assumed as a static load of 400,000 pounds applied horizontally at the resultant line of the forces acting at the center line of the buffing mechanism and at the center line of draft gear, respectively, and shall be assumed to be resisted by all continuous longitudinal underframe members below floor level, provided such members are sufficiently tied together to act in unison. Calculations for resistance to buffing shocks shall be based only on underframe members below floor level. These underframe members may be considered supported against buckling vertically by the superstructure between center plates at cross bearers to the extent that the strength of superstructure, cross bearers, and attachments is available for this purpose.

NOTE.—For electric cars operated on lines where electricity is the only motive power and the total weight of trains does not exceed

600,000 pounds, the static load may be assumed to be 200,000 pounds. This does not apply to cars run in electric trains on railroads using both steam and electric power.

Section 6.—Details.

(*a*) All connections, except those specified for end construction in section 18, shall be designed for the maximum load to which the member connected shall be subject; and secondary stresses in any members caused by eccentric loads shall be combined with the direct stresses in such members. The maximum fiber stresses in any
165 member subject to both direct and secondary stresses may be taken at 20 per cent greater than those given in section 20; but the direct stresses considered alone must not exceed the allowable stresses given in said section.

(*b*) The distance between centers of rivet holes shall be not less than three diameters of the rivet and not more than 24 times the thickness of the thinnest outside member. The minimum distance between the center of the rivet hole and a sheared edge shall be not less than 1½ times the diameter of the rivet.

(*c*) Below the floor line, framing connections of floor beams, posts, etc., may be of rolled steel, pressed plate, or cast steel, and above the floor line such connections may also be of malleable iron. Connections for I beams, channels, or tees may also be made by coping the flanges and bending the web to form a knee, and for angles by coping one leg and bending the other.

(*d*) The use of fillers in the underframe and superstructure shall be avoided wherever possible.

(*e*) All holes for rivets or bolts in the underframe, superstructure or outside finish shall be drilled or punched and reamed to size and fairness. No drifting of holes will be allowed. In deducting rivet or bolt holes to obtain the net area of any section they shall be taken at one-sixteenth inch larger than the diameter of the rivet or bolt. The effective area of a rivet shall be taken as its area before driving.

(*f*) All rivets, when driven, must completely fill the holes and have full concentric heads or countersunk when required.

Section 7.—Center Sills.

The center sills may be built up or composed of rolled or pressed shapes, either with or without cover plates, and cast-steel draft sills or end construction may be used in connection with any of the above types, with suitable riveted connections at splices. Built-up center sills may be either of uniform depth or of the fish-belly shape, and may be composed of rolled shapes, web plates, flange angles, and cover plates. If preferred, the web plates may be flanged and angles omitted. When flange angles are used they shall be connected to the webs with a sufficient number of rivets to transfer the total shear at any point in a distance equal to the depth of the sill at that point. When cover plates are used they must extend at least two rows of rivets at each end beyond their theoretical length.

Section 8.—Bolsters and Cross Bearers.

The body bolsters and cross bearers may be of either cast-steel or built-up construction, with ample connections at center and side sills to transmit the calculated vertical shear.

Section 9.—Floor Beams.

Transverse floor beams may be of rolled or pressed shapes, with suitable connections at center and side of sills.

Section 10.—Floor Supports.

Longitudinal floor supports shall be supported at each transverse floor member.

Section 11.—End Sills.

The end sills may be either of rolled or pressed shapes, built-up construction or cast steel, with ample connections at center and side sills. They must be designed for the maximum vertical loads to which they may be subject and also for the assumed horizontal loads transferred from vertical end members as specified in section 18.

Section 12.—Side Frame—General.

In calculating the stresses in the side frame, its effective depth when designed as a truss or girder may be taken either as the distance between centers of gravity of the side plate and side sill or as the distance between centers of gravity of belt rail and side sill. At the side-door openings the bending moment caused by the vertical shear at door posts shall be considered as being resisted by the section above and below door openings, and the sum of the direct stresses and those due to bending at such sections shall not exceed the stresses specified in section 20. A sufficient proportion of any reinforcing members added to these sections shall be extended far enough beyond the door posts at each side that their reaction can be taken care of by the side frame without exceeding the limit specified for stresses.

Section 13.—Posts.

The sum of the section moduli taken at any horizontal section between floor line and top line of windows, of all posts and braces on each side of car located between end posts, shall be not less than 0.30 multiplied by the distance in feet between the centers of end panels, a panel length being considered as the distance between lines of rivets in adjacent vertical posts.

Section 14.—Sheathing.

Outside sheathing plates of steel or iron shall be not less than ⅛ inch in thickness. Additional outer finish may be used.

166 Section 15.—Roof—General.

The roof may be of either the clear-story or turtleback type. In the clear-story type, the deck plates shall be in the form of a continuous plate girder or equivalent construction extending from upper-deck eaves to deck sill, and either built-up of pressed or rolled shapes or pressed in one piece from steel plates. The carlines may be of either rolled or pressed steel shapes extending in one length across car from side plate to side plate or may extend only across upper deck. In the latter case, the lower-deck carlines may be formed by cantilever extensions of the side posts or by independent members of pressed or rolled shapes. In the turtleback type the carlines may be of either pressed or rolled shapes, extending in one length across car between side plate and side plate or may consist of cantilever extensions of the posts.

Section 16.—Carlines.

The projected area of the portion of roof in square feet supported by carlines divided by the sum of the section moduli of the carlines must not be more than 100.

Section 17.—Roof Sheets.

Roof sheets, if of steel or iron, shall be of a minimum thickness of 0.05 inch and either riveted or welded at their edges.

End Construction.

Section 18.—Vertical End Members.

(*a*) The sum of the section moduli of all vertical end members at each end shall be not less than 65, and the section moduli of the main members, either forming or adjacent to the doorposts, shall be not less than 75 per cent of this amount. Any excess of section moduli over 65 may be distributed at the discretion of the railroad for whose service the cars are built.

(*b*) The horizontal reactions of all vertical end members at top shall be calculated from an assumed external horizontal force, applied 18 inches above floor line, to all vertical members in proportion to their respective section moduli, such force being of sufficient amount to cause bending of all vertical members acting together, and top connections of vertical end members shall be designed for these reactions. The bottom connections of the verdical end members shall be sufficient to develop the full horizontal shearing value of such members.

(*c*) Except where vertical end members shall bear directly against or be attached directly to longitudinal members at either top or bottom, the assumed reactions shall be considered as loads applied to whatever construction is used at end sill or end plate, and both these last-

named members shall have section moduli, respectively, sufficient to prevent their failure horizontally before that of the vertical end members.

Note.—For electric cars operated on lines where electricity is the only motive power and the total weight of trains does not exceed 600,000 pounds, the sum of the section moduli of the verdical end members shall be not less than 40, and the section moduli of the main members, either forming or adjacent to the doorposts, shall be not less than 75 per cent of this amount. This does not apply to cars run in electric trains on railroads using both steam and electric power.

Note 2.—In mail cars having vestibules at one or both ends, similar in form to vestibules of passenger cars, the requirements of the preceding paragraph that "the sum of the section moduli of all vertical end members at each end shall not be less than 65" may be considered as applying to the vertical body end members and the main vertical members of the vestibule taken together. The requirement that "the section moduli of the main members, either forming or adjacent to the door posts, shall not be less than 75 per cent of this amount (65)" may be considered as complied with if the sum of the section moduli of the main vertical body end members and the main vestibule vertical members is not less than 75 per cent of 65.

Section 19.—End Plate.

The end plate may be a rolled or pressed section or of built-up construction and shall extend across end of car from side plate to side plate, with ample connections at ends, or shall be of other satisfactory construction to withstand the assumed loads given above.

Section 20.—Stresses.

All parts of the car framing shall be so proportioned that the sum of the maximum unit stresses to which any member is subject shall not exceed the following amounts in pounds per square inch, except as modified in sections 6 and 18. These stresses, unless otherwise stated below, are for steel having an ultimate tensile strength of from 50,000 to 65,000 pounds per square inch. Where other materials are used, they shall bear the same proportion to the ultimate strength of the material used.

Bolsters of rolled steel.—Stress shall not exceed 12,500 pounds per square inch.

Sills and framing of rolled steel.—Stress shall not exceed 16,000 pounds per square inch.

When cast steel is used, the allowable stresses may be the same as for rolled steel, except tension stresses, which must be at least 20 per cent less than those allowed for rolled steel as specified above.

167 For members in compression the stresses shall be determined by the following formula:

$$\text{Steel } 16{,}000 - 70\,\frac{L}{R}.$$

In the above formula L equals length in inches.
R equals least radius of gyration in inches.

Rivets (Rivet Steel).

	Pounds per square inch.
Shear, other than buffing	10,000
Bearing, other than buffing	20,000
Shear, buffing	12,000
Bearing, buffing	24,000

Section 21.—Floor.

(*a*) Subfloor of postal cars to be of iron or steel, flat or corrugated plate, upper or wearing surface to be of matched wooden flooring, maple or rift-sawed yellow pine or fir, laid longitudinally, or composition, preference in order named. If composition is used, the wearing surface between doors and the standing surface in front of letter tables and paper racks shall be of wood, cork, or other suitable material. Proper insulation, including air space, shall be provided. Floor strips for wood upper course shall be secured by bolts or rivets. Composition flooring may be secured by corrugated, keystone, or equivalent style of plate or by wire fastening securely anchored.

(*b*) Where composition floor is used, wearing surface between doors and standing surface in front of letter tables and paper racks, as stated in above paragraph, is defined as follows:

Wearing surface between doors is the full width of the door opening between side doors. Standing surface in front of paper racks shall extend from center of car to point directly under rod No. 4 on each side. In front of the letter tables, standing surface shall extend at least 2 inches back of a point directly under the front line of table.

Where a single-course main floor is used, the same shall be 1¼ inches thick. In cars for service in extremely cold sections or elsewhere, when desired by owners, two courses of not less than ¾-inch wood flooring, with one course of building paper between, is preferable. Where two courses of main flooring are used, the lower course shall be laid either diagonally or transversely and the upper course longitudinally.

Section 22.—Interior Finish.

Inside, side, and end linings and head lining of postal cars to be of flat or corrugated steel plate, composition board, or wood, properly secured to the car framing.

Section 23.—Insulation.

(*a*) The car shall be insulated throughout, including floors, sides, ends, and roof (except pier panels), with material of such a nature that it can be securely fastened so as to withstand the vibration incident to railway service. The insulating material must be such that it will not support combustion, will not absorb moisture beyond its own weight, and when wet will not become corrosive.

(*b*) Side and end wall and roof insulating material shall be securely fastened. Where the nature of the material permits, it shall be cemented and also mechanically clipped, if necessary, for proper support. Floor insulation shall extend the entire distance between side walls either in one full width or in sections fitted between floor supports and be secured in place.

(*c*) The construction of side and end walls and roof of car shall be such as to avoid or reduce to a minimum continuous metal connection from outside to the inside of the car.

(*d*) To insure maximum of insulating and sound-deadening efficiency, the construction at the junction of side and end walls and floor shall be such as to prevent the circulation of air through the side and end walls or through the floor or into the car.

(*e*) The thermal efficiency of the materials in side and end walls, in roof and in floor must be such that a test duplicate section through walls, roof, or floor (duplicate with the exception of framing members, such as posts, braces, carlines, or stringers, which are to be omitted) will not transmit, when subjected to the test hereinafter described, more than the following amount of heat per square foot of surface in 24 hours for each degree Fahrenheit difference in temperature between the inside and outside walls of the section.

	B. t. u.
For side walls, end walls, and roof	8
For floor	7

168 The method of testing shall be as follows:

A calorimeter, as illustrated and described in Railway Mail Service drawing sheet 18, shall be used in all tests. It shall be carefully constructed and of the materials indicated and before used must be standardized for its thermal loss factor. The sections to be tested shall truly represent the materials as used and disposed in the car.

The heat must be supplied by direct electric current of constant voltage, measured by standardized instruments. The difference between inside and outside temperatures must be held as nearly 70 degrees Fahrenheit as possible. Readings of temperature and current shall not be recorded until 48 hours after heat is turned on and test begins, in order to insure thorough heat saturation of calorimeter and test sections. The duration of actual test shall be eight (8) hours, during which time temperature and electric readings shall be made and recorded each hour or more frequently if considered necessary. The average of all readings thus recorded

shall be taken as the final result. All differences regarding results which may arise between the Post Office Department and the railroad companies affected shall be referred to the United States Bureau of Standards for decision.

Section 24.—Doors, Windows, and Skylights.

(*a*) Postal cars shall be equipped with side doors not less than 6 feet in height from floor, end doors, side windows, and skylights as shown on the standard plans of the Railway Mail Service. Storm or double windows shall be provided where required. Doors and windows may be of wood, combination wood and metal, or metal, preference in order named, and when glazed, the glass shall be double strength. Windows shall be made of two sash sections. The upper section shall preferably be divided into approximately two equal portions—the lower half to be fitted with glass and the upper half screened—so suspended that glass or screened section may be used as desired. Where side framing makes this impracticable, equivalent screen application will be allowed. Where storm windows are applied, they shall be hinged or made easily removable to allow cleaning. Doors and windows shall have suitable weather stripping. Trimmings and locks shall be the railway company's standard. Hasp and staple for outside of side doors shall be in accordance with Railway Mail Service details, modified to suit shape of doorpost.

(*b*) Skylights shall have 5 square feet of glass admitting light, glazed with not less than ¼ inch rough wire glass or ⅜-inch rough plain glass; fixtures and suitable shades shall be provided. For curtain shades below skylights, 10-ounce duck or good quality of buff or light yellow holland shall be used; spring roller fixtures shall be provided, or if canvas is used, it may be strung on wires so as to be easily adjusted according to service requirements.

Section 25.—Lighting.

(*a*) Lighting of postal cars primarily to be with electricity or gas, where feasible; mantles to be used on gaslights where practicable; provision shall be made for emergency lighting as hereinafter specified. Fixtures, wiring, battery boxes and their equipment, gas piping, and all other accessories in connection with the lighting system shall be railway company's standard practice. Each electrically lighted car equipped for axle generator or head-end system of lighting shall be equipped with storage battery of sufficient capacity to furnish for 12 hours the intensity of illumination specified hereinafter. Each car using gas or straight storage electricity as the primary system of lighting shall be equipped with storage capacity sufficient to furnish light for 36 hours at the intensity of the illumination specified hereinafter.

Construction.

Lights are to be located by the railway companies or car builders to produce results called for under the specifications. The Rail-

way Mail Service will not suggest or recommend location of lights. This applies to new or changed installation where the specifications apply.

(*b*) Location of light units.—Body of car. The light units for illuminating the bag-rack and storage portions of the car shall be located on the center line of the car. Direct lighting units in the bag-rack section shall be located at such uniform height that the shadow of the paper boxes is not cast on any bag-rack label, nor higher than approximately 3 inches above the back rod of rack. In no case shall any light unit (except oil lamps, the lowest point of which may be 6 feet 9 inches from the floor) be mounted at a height of less than 7 feet measured from the floor to the lowest point of the light unit. Spacing between adjacent units in the bag-rack portion of the car shall not exceed 8 feet 6 inches in case of any direct system of lighting, nor 14 feet in case of any indirect system.

(*c*) Letter cases.—Light units for illumination of the letter cases shall be mounted at a uniform height from the floor but not lower than the units in the bag-rack section, and as far from front of the face of the letter case as possible without the body of the distributor throwing any shadow on his work. In standard construction the above distance is 20 inches. Where the car construction does not permit the above distance, a lesser distance, but not less than 16 inches, may be employed. Separation between adjacent letter-case units shall be such as to provide an illumination intensity at all points within the requirements hereinafter specified.

169 (*d*) If an indirect lighting system be employed, the provisions of the above paragraph will be waived. In such case, the only requirements imposed for location of units at letter cases are those involved in providing for sufficient vertical and horizontal illumination intensities to meet the provisions of these specifications as hereinafter stated, all units in the car burning. For the purpose of these specifications, an indirect system is here defined as any system in which at least 85 per cent of the horizontal illumination on the 46-inch plane of utilization is received, either directly or indirectly, by reflection of the light from the deck of the car.

(*e*) Special features of light units.—In the case of incandescent electric or gas lamps, the design of light unit, except letter-case units, shall be such that no portion of the bare lamp filament or the bare mantle is visible to the eye when the unit is observed at an angle of 70° or greater from the nadir. (In general, light units are preferred which emit no light or only a small amount of light between the angles of 50° and 100° from the nadir.)

(*f*) The control of the lights in the postal apartment shall be in that apartment and independent of any other lights in the car and the letter-case units shall be controlled independently of any other light units in the postal apartment. Knife and snap switches only shall be placed in mail apartment; all other mechanism to be placed in adjoining apartment.

(*g*) Initial illumination values.—All horizontal illumination values shall be taken on plane 46 inches above floor line. Vertical

illumination values shall be taken on the vertical plane on the face of letter case as specified below. New lighting installations shall be such as to give initial illumination values within the following limits:

Bag-rack portion:

Location.	Minimum, F. C.	Maximum, F. C.
Center of car, horizontal	4.70	10.00
Mouth of bags, illumination measured 18 inches from side of car, horizontal	2.50	10.00

Letter cases:

Over table horizontal	4.70	16.00
Face of case, vertical	2.08	16.00
Storage portion, not behind obstructions, horizontal, measured 30 inches from side or end of car	2.50	10.00

(*h*) Illumination requirements at letter cases as above specified, shall be entirely fulfilled by letter-case units, other units in the car not burning, but letter case units may be considered as contributing to the specified illumination values for the body of the car.

(*i*) If globes or reflectors of opal glass, rough crystal glass, prismatic glass, or aluminumized metal, and those giving similar results (excluding heavy density opal with glazed reflecting surface, mirrored glass, porcelain enameled metal, and those giving similar results) be employed, the minimum values specified in the above table may be reduced 20 per cent and the maximum values increased 20 per cent.

(*j*) Above illumination values are based on an allowance of 40 per cent for depreciation in service. Less efficient maintenance must be compensated for by increased initial installation.

(*k*) If an indirect lighting system be employed, the minimum and maximum values in the above table may be respectively decreased and increased 40 per cent in the bag-rack and storage portions of the car and 25 per cent at the letter case locations specified in above table.

(*l*) Emergency lighting.—An emergency lighting system consisting of candle lamps will be required on all cars lighted primarily by electricity or gas. A more adequate system of emergency lighting as defined hereinafter, may be required. (See floor plans for location of candle lamp holders.) A candle lamp should be furnished for each holder. Boxes to contain candle lamps when not in service, should be located at some convenient and acceptable point in the car. Suggestion is made that such boxes be located in connection with electric light control boxes when available, either above or below, as may be practicable, or the candle lamp box may be located in the storage end of the car above the brakewheel,

clearing the latter. In 30, 25, 20, and 15 foot apartments, locate box over letter case on partition.

(*m*) Electric switches.—In apartment cars locker containing knife and snap switches controlling current and lights should be located on end of paper boxes when same will not project into doorway lower than 5 feet 8 inches above floor line. Where this would occur, locker should be located as high as possible on the bulkhead next to hopper, on hopper side.

170 Operation.

(*n*) Service illumination values.—While the car is in active service the lighting installation shall be maintained at all times to give illumination values not less than the following minimum values:

Bag-rack portion:

Location.	Minimum, F. C.
Center of car, horizontal	2.80
Mouth of bags, illumination measured 18 inches from side of car, horizontal	1.50
Letter cases:	
Over table, horizontal	2.80
Face of case, vertical	1.25
Storage portion, not behind obstructions, horizontal, measured 30 inches from sides or ends of car	1.50

(*o*) Illumination requirements at letter cases as above specified shall be entirely fulfilled by letter-case units, other units in the car not burning; but letter-case units may be considered as contributing to the specified illumination values for the body of the car.

(*p*) If globes or reflectors of opal glass, rough crystal glass, prismatic glass, aluminumized metal, and those giving similar results (excluding heavy density opal with glazed reflecting surface, mirrored glass, porcelain enameled metal, and those giving similar results) be employed, the minimum values specified in the above table may be reduced 20 per cent.

(*q*) If an indirect lighting system be employed the minimum value in the above table may be decreased 40 per cent in the bag rack and storage portions of the car, and 25 per cent at the letter-case locations specified in the above table.

(*r*) Light failure.—A light failure is defined as the condition where for a period exceeding 30 minutes the primary lighting system fails to give sufficient illumination to permit distribution of mail matter to be continued. It will be considered that whenever the lamp voltage falls below 80 per cent of the normal operating lamp voltage such a condition of light failure has been reached.

(*s*) Car movement.—A car movement is defined as the use of a postal car by a crew of postal clerks over the length of their run in

one direction. Where a car covers more than the run of one crew, each separate run shall be considered a car movement.

(*t*) Percentage of failure.—The percentage of failure of the lighting system is defined as the ratio of the total number of failures to the total number of car movements of each primary system of lighting (gas and electrically lighted cars to be considered separately) on each railway system. The determination of percentage of failure shall be based on the operating performance of each car for the preceding 12-months period. Only such failures as are promptly reported by the Railway Mail Service to the operating railroad shall be considered in computing the percentage of failure.

(*u*) Emergency lighting.—If the percentage of failure of the primary system of electric or gas lighting does not exceed 1 per cent, candle lamps will be accepted as a suitable emergency light.

If the percentage of failure of the primary system of gas or electric lighting exceeds 1 per cent and is not greater than 4 per cent, an emergency system of suitable oil lamps, gas or electric lights, maintained by independent storage capacity, may be required. Such emergency system must provide illumination values not less than 50 per cent of the minimum operating illumination values specified above for the primary system, with the exception of letter cases and center line of car through bag-rack portion where the illumination shall not be less than 60 per cent.

If the percentage of failure of the primary system of electric or gas lighting exceeds 4 per cent, a new installation or a second complete primary system of lighting will be required on cars so failing.

(*v*) The illumination values herein specified shall be determined by the usual and approved methods. Any differences regarding the same which may arise between the Post Office Department and the railway companies affected shall be referred to the Bureau of Standards for decision.

Section 26.—Heating.

(*a*) Requirements of the department embody three main points: First, sufficient heat to keep the postal car or apartment comfortably warm; second, proper distribution of heat, particularly throughout that part of the car occupied by letter cases and bag racks (care should be taken not to have excess of heat around letter cases), and third, an arrangement of pipes to avoid interference with distributing facilities.

(*b*) To obtain the results outlined above, the department will require postal cars and apartments to be equipped with sufficient amount of radiation to make the floor of the car comfortable and to obtain a temperature of 65 degrees between the side doors at a point 5 feet above the floor line and to maintain such temperature under the most adverse weather conditions to which the car is subjected when in service. Sufficient radiation should be provided in the end of the car containing hopper and washstand to maintain a temperature of at least 48 degrees in that location.

171 (*e*) Heating of postal cars primarily to be with steam or hot water. Pipes are to have suitable protection guards of wire or perforated metal. Pipes located behind bag-rack sections shall not occupy space exceeding 20 inches in height and 4½ inches from wall of car to outside of guard. All heating-pipe screens, whether of wire netting or perforated metal, should stop 2 or 2½ inches above the floor so as to permit of cleaning. All inlet and trap valves must be accessible when bag racks are hung with sacks or storage stalls are full of mail.

(*d*) Where perforated metal is used for heating-pipe covering behind bag racks, perforations should extend along the top as well as the side of the guard to permit radiation of heat. Preference is expressed for wire netting for this purpose.

Where feed pipes to these wall radiators extend along the face of door pockets, and the screen over these pipes covers the opening at the back of the pocket, a section of the screen should be detachable so as to make opening accessible for the removal of dirt and snow.

(*e*) Where bulkhead radiators are used as part of the heating system, the inside line of same shall be not less than 21 inches from center of car, so that a clear aisle space of 42 inches will be provided where two radiators are installed oppositely. All radiators must be screened. Bulkhead radiators should be substantially supported and corresponding stanchions omitted.

(*f*) Where wall radiators are installed in storage end of cars, wire netting or perforated-metal covering should be reenforced every 18 inches and provision made to hold the screen at least 1 inch from the pipe. Considerable weight will rest against screen, and it should be substantially constructed.

(*g*) Where service conditions require, an auxiliary coal-burning stove shall be furnished, complete with coal box and firing tools, smokejack properly screened, and protection guards. The stove and coal box to be securely attached to floor. Stoves furnished must be of a safety pattern or design, properly guarded by metal casing so as to prevent overheating of closely surrounding objects and damage which might result therefrom. Protection guards should be built to height of stove and wire netting used above that point to permit better radiation of heat. Stove guards should extend toward center of car as far as the front line of stove. Front support of guard should be iron pipe.

(*h*) All exposed edges of wire netting or screen shall be bound,

(*i*) The train-pipe steam line to be applied and equipped with end valves, steam hose and couplings, as per M. C. B. requirements and the railway company's standard. All valves must be located so as to be readily accessible.

Section 27.—Deck of Car.

(*a*) Ventilation of postal cars of clear-story design to be accomplished preferably by means of self-acting ventilators, having intake and exhaust working in conjunction. Four such ventilators per side for 70 and 60 foot cars; three per side in 50 and 40 foot cars, and two

per side in mail apartments, placed to obtain maximum results. Other deck sash to have clear glass and to be placed in fixed position without screens. Trimmings of deck sash to be railway company's standard.

(*b*) Postal cars not having clear-story roofs are to have a sufficient equipment of self-acting ventilators in the roof.

(*c*) Where exhaust ventilators only are used, intake of air should be provided substantially equal to the capacity of the exhaust. If this is accomplished by means of swinging deck sash, they should be limited to the fewest number necessary. Such deck sash should be screened.

(*d*) As much clear glass surface as possible should be provided in deck of car for the purpose of admitting light, and deck piers should not be wider than necessary.

Section 28.—Vestibules.

Postal cars are to be equipped with the railway company's standard short vestibule, preferably with outside buffer springs, and with diaphragms when needed for communicating between cars.

Section 29.—Couplers and Draft Gears.

The details of the coupler and draft gear to be in accordance with Master Car Builders' and United States safety-appliance requirements and the practice of the railroad for which the cars are built.

Section 30.—Buffing Mechanism.

The details of the buffing mechanism to be in accordance with the practice of the railroad for which the cars are built.

Section 31.—Brake and Signal Equipment.

(*a*) Postal cars shall be equipped with automatic air brakes and signal equipment in accordance with railway company's practice. Hand brakes in accordance with United States safety-appliance standards. Brakes shall be applied to all wheels, and, on four-wheel trucks, preferably inside hung or clasp type.

(*b*) Brake wheels should be installed inside postal cars and apartments only so far as necessary to comply with Interstate Commerce regulations, one brake wheel in each full mail car is sufficient, located in clear storage end of car. One brake wheel in combination cars, to be located in baggage end, is acceptable where there is a creep or other door connecting the apartments.

172 (*c*) Suitable cord or attachments shall be furnished for convenient operation of the conductor's valve and train-signal system, which may be hung to safety rod, provided supports are placed at short intervals to prevent cord hanging loosely.

Section 32.—Steps, Handholds, Signal Brackets.

The details of the steps, handholds, and signal brackets to be in accordance with United States safety-appliance and M. C. B. requirements and the practice of the railroad for which the cars are built. Side steps to be full width of door opening where possible. Handholds to be applied to each side door post. See R. M. S. drawings for detail step construction.

Section 33.—Stanchions and Screens.

Stanchions in storage ends and at ends of pouch racks, screen frames, and screens to be located as per standard Railway Service plans.

Section 34.—Safety Rods and Bars.

Safety rods to be applied in an equivalent manner to that called for in Railway Mail Service interior specifications. Each side door not equipped with catcher arm should be provided with safety bar.

Section 35.—Interior Equipment.

The following equipment shall be furnished. Railway Mail Service drawings should be followed where these details are shown; otherwise details to be as per railway company's standard.

Broom.
Catcher arms.
Chair or stout stool.
Cinder guards.
Coffee heater when necessary.
Cots when necessary.
Disinfectants.
Distributing tables.
Deck-sash opener.
Dustbrush.
Dumping tray.
Fire buckets.
Fire extinguishers.
Folding washbasin.
Hopper.
Letter cases.
Lock rods.
Mirror.
Paper boxes.
Paper rakes.
Portable bins.
Register cages.
Sack and pouch racks.
Shelf and letter drop.
Slip case.
Stepladder.
Torch for lighting gas.
Toilet-paper holder.
Wardrobe.
Water cooler.
Water tank.
Wrecking tools.
Wire screens for letter case.

Section 36.—Trucks.

(a) Trucks may have either built-up metal or cast-steel frames, and may be either four-wheel or six-wheel type, within the limits of the journal loads given below.

(*b*) For cars equipped with one cast-iron brake shoe per wheel the effective maximum emergency brake-shoe pressure must not exceed 18,000 pounds per shoe. In this case the maximum weight per journal of loaded car for Master Car Builders' standard axles shall not exceed 10,000 pounds for 4¼ by 8 inch journal, 14,000 pounds for 5 by 9 inch journal, 17,000 pounds for 5½ by 10 inch journal, or 20,000 pounds for 6 by 11 inch journal. Where two brake shoes per wheel are employed the standard Master Car Builders' journal loads may be used.

(*c*) Wheels shall be either all steel or steel tired. All other truck details, including body and truck center plates and side bearings, shall be in accordance with Master Car Builders' requirements and the practice of the railway for whose service the cars are built.

Section 37.—Painting.

The painting of car body and trucks shall be in accordance with railway company's specifications for steel cars. Light-color enamel paint shall be used for interior finish above side plate; below that line the car shall be painted a medium shade of darker color, preferably light buff or light brown, with dull finish. The lettering and numbering of postal cars shall conform to Railway Mail Service requirements and the railway company's standards. The inside length and width, the car number, and title of the company owning shall be painted at a convenient place inside the car. End doors and end-door posts must not be sanded.

Approved:

A. H. STEPHENS,
General Superintendent Railway Mail Service.
JOSEPH STEWART,
Second Assistant Postmaster General.
A. S. BURLESON,
Postmaster General.

Washington D. C., March 17, 1915.

NOTE.—In building steel mail apartment cars this specification should be followed.

173 Post Office Department.

Specifications of Fixtures for Mail Cars.

(Approved Mar. 28, 1912. Revised to Mar. 17, 1915.)

Section 1.—Distributing Tables Under Letter Cases.

(*a*) Contour and location are shown on Railway Mail Service floor plans for mail cars. Letter case tables in 60, 50, and 40 foot ful postal cars and 30, 25, 20, and 15 foot apartment cars should be 18 inches

wide in clear between front of letter cases and inside of molding at widest part. For width of table in apartments less than 15 feet in length, see Railway Mail Service floor plans.

(*b*) Tables shall be of cherry, birch, or maple, preference in order named, and when finished shall be 1½ inches thick. Top of table shall be 28 inches from floor. Wooden drawers with hasp for locking shall be installed as indicated on Railway Mail Service floor plans.

(*c*) 10 inch by 10 inch canceling pads of high-grade elastic rubber, ½ inch thick, shall be installed in letter tables at points indicated on Railway Mail Service floor plans, top surface of pads, to be flush with top of tables.

(*d*) A flat wooden strip, 2½ inches wide, 1 inch thick, quarter round at outer top edge, shall be placed at front edge of letter tables, to project 1 inch above surface of table. Sections shall be cut out at front, flush with surface of table, to provide for the removal of sweeping, ends of strip at opening to be rounded. See Railway Mail Service floor plans.

(*e*) For details, see Railway Mail Service drawings, sheets 1, 2, and 3, sheet 6, figure 2, and sheet 10, figure 3.

Section 2.—Letter Cases.

(*a*) Location of letter cases, with number and sizes of boxes to be provided, is shown on Railway Mail Service floor plans.

(*b*) Cases shall be constructed of aluminum or other metal, or wood when over-all dimensions permit. Vertical partitions shall be not less than 1/32 inch thick (if of aluminum, not less than 1/16 inch), devoid of shoulders, and present a rounded front not more than 3/16 nor less than 3/32 inch thick. The "Tilley" revolving label holder, a metal holder of equivalent design, or square label holder made of cherry or mahogany, shall be applied in front of horizontal partitions and above top row of boxes of all cases. No label holders are required at bottom of cases. If wood holders are used, corners should be beveled 1/16 inch, forming 3/8 inch flat surface, for application of paste labels. The label holders shall be installed so that each face may be turned to the front at will and be held in position by flat springs applied in such manner as to prevent formation of shoulders. Any number of label holders up to seven may be operated by one spring. Top of label holder shall be level with bottom of box at outer edge.

(*c*) Cases shall be made 12 rows high, the back of bottom row of boxes to rest on letter table. The seven lower rows and top row of boxes shall each be 4 inches high. The eighth, ninth, tenth, and eleventh rows shall be 3¼ inches high. Short letter boxes shall be 6¾ inches and long letter boxes 9¼ inches deep, front to back (exclusive of label holders), sloping from the front 1½ inches. Short letter boxes shall be 4¼ inches and long letter boxes 5 inches wide. The bottoms shall be of perforated steel not less than 1/32 inch thick stamped to pattern shown on Railway Mail Service drawings, sheet 4, except lower row of boxes shall have bottoms with

perforations at back only, with corresponding openings through letter tables to permit dust to fall through. Bottoms shall be turned at front to meet the ½ inch square label holders in such manner as to prevent formation of shoulders as indicated on drawings. There shall be a strip 1 inch wide underneath cases, immediately in front of holes through tables, fitted snugly between partitions to prevent accumulation of dust under case. Space between bottom of case and top of table shall be closed in by a vertical strip flush with face line of case.

(*d*) Figures in preceding paragraph covering height and width of boxes indicate dimensions in the clear at front.

(*e*) Portable screens of suitable wire, not to exceed 1-inch mesh, framed to insure rigidity, shall be applied to front of letter cases, as indicated on Railway Mail Service floor plans. Screens shall be suspended from hooks at top line and arranged to lock below bottom line of cases.

(*f*) Back of letter cases shall be covered with sheet metal or 1/16-inch wire. If the latter is used, mesh shall not exceed ¼ inch. Triangular space back of wing letter cases in full cars should be left open to accommodate wrecking tools, and fire extinguishers, if desirable.

174 (*g*) If metal other than aluminum is used, cases shall be given a heavy coating of dull aluminum paint.

(*h*) Supports and attachments for portable letter cases shall be proportionate to the weight of the section. Where necessary, additional strap hook to hang from safety bar should be provided on outer edge.

(*i*) For details, see Railway Mail Service drawings, sheets 1, 2, 3, and 4, and sheet 5, figure 3.

Section 3.—Racks for Sacks and Pouches.

(*a*) Only such type of rack as has been approved by the department shall be installed in any car.

(*b*) Top frame of rack section to consist of four ¾-inch pipes, placed parallel with side of car. The rod nearest wall of car is designated as No. 1; the next, or middle top rod, as No. 2; the outside top rod, nearest center of car, as No. 3. Rods 1 and 2, and 2 and 3, shall be placed in line 13 inches center to center. Rod No. 4, same size, shall be 2¼ inches below and 1¼ inches forward of rod No. 3 (measuring center to center). This rod is used to support paper-distributing tables, dumping tray, and bridges. Racks should be made in standard sections, 5 feet long, end to end, outside measurement, clearance at each end to be ¼ inch when installed, and shall furnish not less than 4 feet 10¼ inches clear hanging space between end members. Rack sections of same construction of less length than the above standard shall be installed when required, as shown on Railway Mail Service floor plans.

(*c*) Racks shall be of such construction as will permit of top frame being raised or lowered at will, that the space may be used for storage purposes.

(*d*) Two parallel rods of ¾-inch pipe, equidistant from center line of car, shall be installed to support paper-distributing tables and bridges. Rods shall be placed 4 inches apart, center to center, shall be 30½ inches from floor to center of rods, and be supported at ends and joints by single standards. Rods shall be made in sections to correspond in length with sections of racks and installed in such manner as to be removable in pairs. (See Railway Mail Service floor plan- D and F for exceptions.)

(*e*) Sections of rack as hereinbefore described shall be installed on each side of parallel center rods, 22¾ inches from nearest rod to rod No. 4 of said sections (measuring center to center). The intervening space not occupied by distributing tables and dumping tray shall be filled with bridge sections. Such section shall be of ¾-inch pipe, and be 22½ inches long and 13 inches wide, with sides elevated 4 inches above ends. Measurements to be made center to center. Rod No. 1 shall be placed 38½ inches from floor to center. This rod will be 2 inches from side wall to center, in cars 9 feet in width, inside measurement, and in wider cars racks shall be similarly located from center line of car, the additional space between wall and rod No. 1 to be taken up by blocking-out brackets. Rod No. 2 shall be 37½ and rod No. 3, 36½ inches from floor to center.

(*f*) Five aluminum, malleable iron, or brass label holders uniformly spaced, shall be placed on rods No. 1 and No. 2, and one in center on each side of bridges. Label holder shall be 7 inches long, 1¼ inches wide, and have machine-milled slot 1/16 inch deep and 15/16 inch wide, enlarged at ends, into which folded paper labels can be inserted. Face opening of slot shall be 11/16 inch wide. Label holders shall have smooth finish, devoid of cutting edges and sharp points, and be attached to rods at an angle of 60 degrees from horizontal axis through lugs 1 inch from ends at such height as to give 5/16 inch clearance between rod and label holder, permitting free movement of hooks. Label holders should be riveted to rod or attached with machine screws, countersunk, heads to be soldered or covered with metal cement to present smooth surface and prevent loosening. (There shall be no label holders on rod No. 3.)

(*g*) Revolving-shank hooks shall be placed on the rods as follows: Rod No. 1 to have 20 hooks, all pointing toward rod No. 2. Rod No. 2 to have 40 hooks, pointing alternately toward rods No. 1 and No. 3. Rod No. 3 to have 20 hooks pointing toward rod No. 2. On rod No. 1 one hook should be placed at each end of each label holder, and two under middle part, between lugs. On rod No. 2, two hooks pointing alternately toward rods No. 1 and No. 3, should be placed under each end of each label holder, and four hooks, similarly applied under middle part, between lugs.

(h) Rods and hooks, when painted, should permit free movment.

(*i*) Hinged wire screens to be provided at end of bag racks, adjoining door openings. Hooks should be provided for securing screen to wall when not in use, and springs or bolts under paper boxes to prevent rattling when in service position.

(*j*) For details, see Railway Mail Service drawings, sheets 8, 8a, and 14, figure 4.

Section 4.—Paper Distributing Tables and Dumping Tray.

Wood required. For details, see Railway Mail Service floor plans and drawings, sheet 9.

Section 5.—Letter Package and Paper Boxes in All Mail Cars, Except 8, 10, and 12 Foot Apartments and 6, 8, 10, 12, and 15 Foot Alley Apartments.

(*a*) Letter package boxes may be of wood or metal construction sufficiently heavy to prevent deformation. Paper boxes shall be of wood with wood or steel roof and back.

(*b*) Paper boxes shall be 9 and 12 inches wide, respectively, center to center, as shown on Railway Mail Service floor plans. Shall be not less than 25 inches front to back in the clear, bottom sloping 6 inches toward front. Bottom line at front to be 5 feet 3 inches from floor. Boxes should conform at top to contour
175 of deck. If necessary to reenforce bottom to prevent warping, transverse wood strips, about 1 inch thick by 2 inches wide, under every vertical partition should be used, strip bottom, and partition to be screwed together.

(*c*) In cars having round roof, paper boxes shall conform to details of measurement and shall have not less than the capacity indicated in paragraph (*b*).

(*d*) Paper boxes shall have wooden sliding fronts not less than 8 nor more than 10 inches high, or approximately one-third the height of front of box with 4½-inch combined label holder and lift at top. Fronts shall have wire or grill latticework centers.

(*e*) Brass or steel friction springs, to hold sliding fronts in a raised position, shall be placed in slide grooves in vertical partitions.

(*f*) Double or twin hooks shall be placed under each vertical partition, with points toward side of car, 1 inch back from face line of boxes.

(*g*) Paper boxes should be numbered consecutively, beginning with box nearest side door next to hopper. (See Railway Mail Service drawings, sheet 7.)

(*h*) Letter package boxes in apartment cars, and paper boxes in 8, 10, and 12 foot apartments and 6, 8, 10, 12, and 15 foot alley apartments, shall be installed as indicated on Railway Mail Service floor plans. These boxes shall follow same general construction as overhead paper boxes described in preceding paragraphs.

(*i*) For details, see Railway Mail Service drawings, sheet 5, figures 1 and 2, and sheet 7.

Section 6.—Small Cases for Slips.

Small wooden pigeonhole case for slips and schemes and a small wood box for labels from pouches shall be installed as indicated on Railway Mail Service floor plans. For details, see Railway Mail Service drawings, sheet 10, figures 2 and 7.

Section7.—Portable Bins for Letter Packages.

Portable bins, of substantial light wood construction, approximately 15½ inches wide, 19½ inches front to back, 14¾ inches high at back, and 10¾ inches high in front, shall be furnished, as follows:

Four for 60-foot cars; two for 50 and 40 foot cars. (See Railway Mail Service drawings, sheet 10, figure 1.)

Section 8.—Cage for Registered Mail.

A strong wire netting cage shall be installed in all mail cars and apartments. For details, see Railway Mail Service floor plans and drawings, sheets 2 and 3, also sheet 6, figures 1, 3, and 4.

Section 9.—Hoppers.

Flushing or dry hopper, former preferred, shall be installed at location in car indicated on Railway Mail Service floor plans. When dry hopper is used, it shall have double lid, large opening top and bottom, with nearly straight sides, and chute leading through and extending below floor; bottom to be free from obstruction and provided with deflector. (See Railway Mail Service drawings, sheet 10, figure 6.)

Section 10.—Lavatory.

Lavatory located as indicated on Railway Mail Service floor plans shall be of the folding type, designed to occupy not to exceed 6½ inches front to back when folded; to have basin not less than 12 inches in diameter, 4½ inches deep, and not less than ½-inch splash rim at top. Top of basin, when lowered, to be 30 inches from floor. A steam jet shall be introduced into basin or water system to heat water.

Section 11.—Water Tanks and Drinking-Water Containers.

(*a*) Drinking-water container shall be constructed to keep water and ice separate and free from foreign substances when filling, with provisions for draining each compartment at bottom, unless container is constructed in such manner as to permit of easy removal for cleaning. Suitable waste pipe for drippings with large outlet through floor to prevent freezing shall be provided. Only such type of container as has been approved by the department shall be installed in any car. For full cars water cooler having not less than 6 to 8 gallons capacity should be used. Smaller tanks (not less than 4 gallons in capacity) will be acceptable for apartment cars.

(*b*) Tanks, insulated when service conditions require to prevent freezing, to contain water for lavatory and hopper, cylindrical or

shaped to conform to deck of car, shall be located in deck above hopper, with provision for filling through roof or from sill or both, and shall be securely attached. Minimum capacity of overhead water tanks as follows:

40, 50, and 60 foot full cars, 40 gallons.

30-foot apartments, 25 gallons.

15, 20, and 25 foot apartments, 20 gallons.

8, 10, and 12 foot apartments, 15 gallons.

When dry hoppers are used the above capacity may be reduced 50 per cent.

(*c*) For typical construction see Railway Mail Service drawings, sheet 16.

176 Section 12.—Wardrobe—Mirror.

(*a*) Wardrobe of substantial construction shall be installed as indicated on Railway Mail Service floor plans. Same shall extend from floor to deck of car, be provided with latch and hasp for locking, shelf 5½ feet from floor, and have a row of substantial wardrobe hooks 6 inches apart extending around sides and end under shelf. In wardrobes 12 inches wide or less hooks should be placed on end and one side only. Ventilation should be provided through holes or grille plates at bottom and top of door. For details, see Railway Mail Service drawings, sheet 14, figure 1.

(*b*) A mirror, approximately 12 by 15 inches, should be located at most available point above lavatory.

Section 13.—Wrecking Tools—Fire Extinguishers.

Shall be provided in accordance with existing laws and regulations. Extinguishers may be attached to ends of overhead paper boxes adjacent to side doorways. Wrecking tools may be attached vertically to side wall back of wing letter case in full cars or as shown in Railway Mail Service floor plans.

Section 14.—Gas Plate, Steam Cooker, or Equivalent.

Shall be installed when required for use of postal clerks in making coffee and warming lunches, located preferably on bulkhead, as indicated on Railway Mail Service floor plans, approximately 5 feet from floor. Gas plate should be installed in gas-lighted cars. For details, see Railway Mail Service drawings, sheet 13, figures 1 and 2.

Section 15.—Cots—Stepladders—Stool—Chair.

(*a*) Portable cots and stepladder should be furnished in cars where service conditions require their use. Hooks for hanging stepladder to be provided on side of clothes closet where practicable.

(*b*) A chair, or stout stool, 18 inches high, should be placed in all mail cars and apartments.

(c) For details, see Railway Mail Service drawings, sheet 10, figure 5, and sheet 14, figures 2 and 3.

Section 16.—Deodorants and Disinfectants—Toilet Paper.

Toilet paper required in all cases; deodorants and disinfectants where conditions warrant.

Section 17.—Door Fixtures.

Suitable outside door fixtures shall be applied on side doors in such manner that door may be opened to full width between posts, and be locked shut with mail or other lock, as a means of safety.

A catch shall be provided to hold sliding doors in an open or closed position as desired.

End doors shall be provided with a locking bar.

Other fixtures, standard. For details, see Railway Mail Service drawings, sheet 11, figures 6, 7, and 8, and sheet 12, figure 5.

Section 18.—Rakes for Paper Boxes.

Two steel rakes, having crossheads 6½ inches long 5 teeth 2½ inches long and handles 24 inches long, shall be furnished for each full railway post-office car, and one such rake for each apartment car.

For details, see Railway Mail Service drawings, sheet 10, figure 4.

Section 19.—Catcher Arms—Safety Bars—Cinder Guards—"No Admission" Notices.

(a) Two catcher arms shall be furnished for each car, sockets applied to all side-door posts. Safety bars, to be secured in position by locking device, shall be installed at noncatcher doors in catcher-arm sockets. For details, see Railway Mail Service drawings, sheet 12, figures 3 and 4.

(b) Four cinder guards shall be furnished for each full and two for each apartment car, holding brackets to be applied to all side-door posts and at ends of overhead paper boxes. Wire protection over glass or cinder guards should be curved in front of same and hinged or made removable to permit of cleaning glass.

(c) Two "No Admission" notices, properly framed, must be placed in full cars, and one such notice in apartment cars. These notices should be placed on end of paper boxes or on suitable wall location near side doors.

Printed "No Admission" notices, without frames, are furnished by the Post Office Department.

Section 20.—Safety Rods—Window-protection Rods.

(a) Two rods of 1-inch iron pipe shall be suspended 7 feet 3 inches from floor to center of rod and 19 inches from center of car. Rods to extend full length of car, curved to clear lights, and shall be suspended from deck ceiling by hangers not more than

8 feet apart, which shall be securely attached to reinforcement or filling blocks between ceiling and roof at each hanger. Safety rods shall be securely side braced to deck sills at each hanger. A ⅝-inch hand rod, securely attached to side plate, shall be installed above each side door, extending full width of same.

177 (*b*) Five-eighth-inch rods of hardwood, hickory preferred, spread 3 inches apart in detachable frame, shall be provided as protection for windows on inside. Windows adjacent to side doorways shall be protected by ½-inch iron rods outside, if window is located less than 2 feet from door opening. For details, see Railway Mail Service drawings, sheet 11, figures 1 and 2, and sheet 12, figure 1.

Section 21.—Letter Drops.

Letter drops shall be installed as indicated on Railway Rail Service floor plans, and shall conform in detail of construction to Railway Mail Service drawings, sheet 15, revised.

Section 22.—Movable Stanchions.

Shall be made of 1½-inch gas pipe or steel tubing of the same outside diameter. Floor sockets to be located as shown on Railway Mail Service floor plans. Pole next to wall should be 12 and inside pole 29 inches from wall to centers. Where stoves are omitted, one additional set of stanchion sockets in lieu of bulkhead should be provided, except in 40-foot full and 30 and 25 foot apartment cars, where two additional sets of stanchion sockets should be provided, unless wardrobe is of sufficiently substantial construction to allow piling of mail against it. When stoves are omitted, an additional set of poles should be provided in 40-foot full cars, 25-foot, 15-foot, 12-foot, 10-foot, and 8-foot apartments. Springs shall be placed in top brackets to prevent stanchions from rattling. Stanchions shall be provided with label holders when service conditions require.

For details, see Railway Mail Service drawings, sheet 11, figures 3, 4, and 5, and sheet 14, figure 4.

Floor plans and drawings referred to herein bear date of November 30, 1914, redrawn or revised, or December 10, 1914.

Approved:

A. H. STEPHENS,
General Superintendent Railway Mail Service.
JOSEPH STEWART,
Second Assistant Postmaster General.
A. S. BURLESON,
Postmaster General.

Washington, D. C., March 17, 1915.

Washington: Government Printing Office, 1915.

(Here follow reproductions of four photographs marked pages 178, 180, 182, and 184 respectively; also protographs marked pages 186, 188, and 190.)

No. 783
Penna. R. R. Co.
Pub. Serv. Comm. of Pa.
#178.

179 (*Endorsement.*)

The Public Service Commission

of the

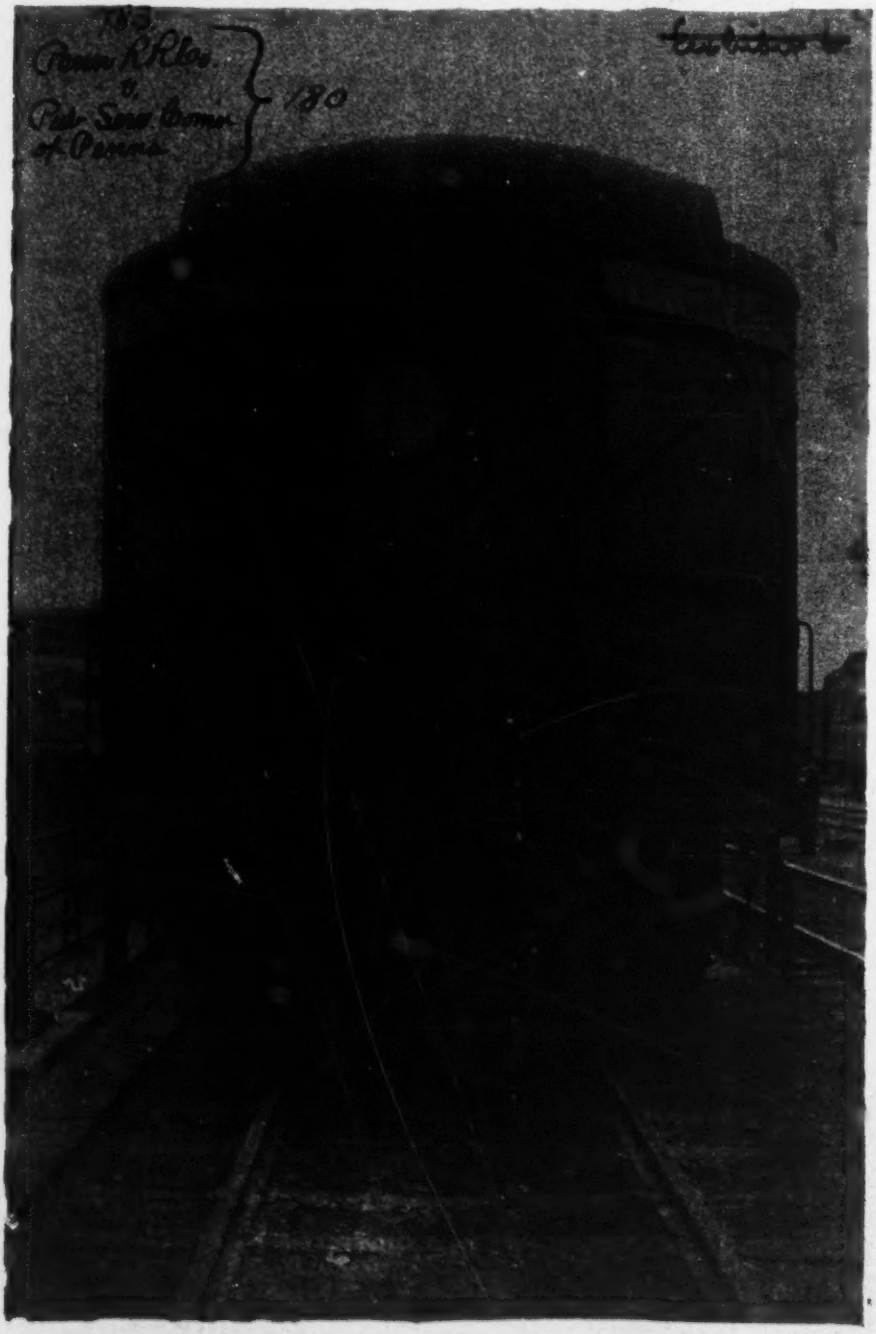
Commonwealth of Pennsylvania.

—— Docket No. —, ——.
(Year)

Res. Exhibit No. 5.

Hearing Held 12/21/15.
(Date)

——, Reporter.


183
Penna R.R. Co
to
Pitts. Steel Co.
of Penna.
180

181 (*Endorsement.*)

The Public Service Commission

of the

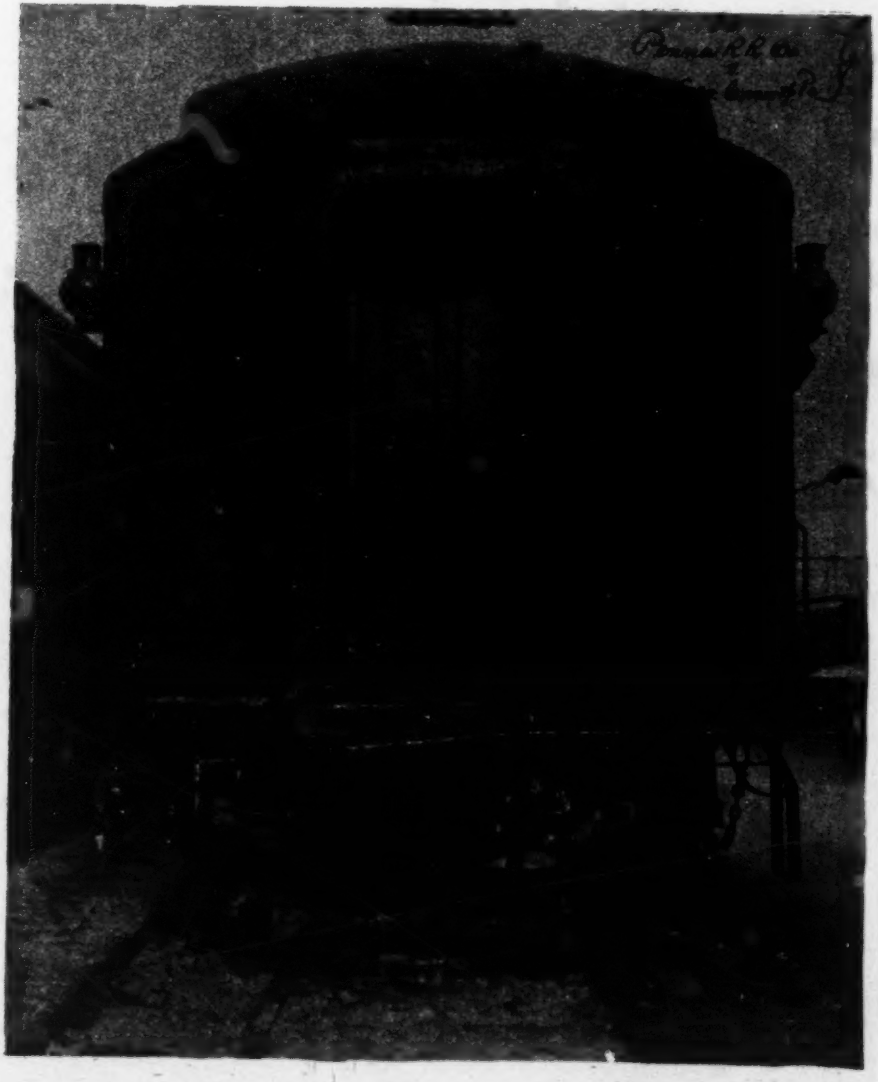
Commonwealth of Pennsylvania.

C. P. Docket No. 489.
(Year)

Res. Exhibit No. 6.

Hearing Held 12/21/15.
(Date)

H. F. Jolly, Reporter.



183 (*Endorsement.*)

The Public Service Commission

of the

Commonwealth of Pennsylvania.

C. P. Docket No. 489, 1915.
(Year)

Res. Exhibit No. 7.

Hearing Held 12/21/15.
(Date)

H. F. Jolly, Reporter.

185 (*Endorsement.*)

The Public Service Commission

of the

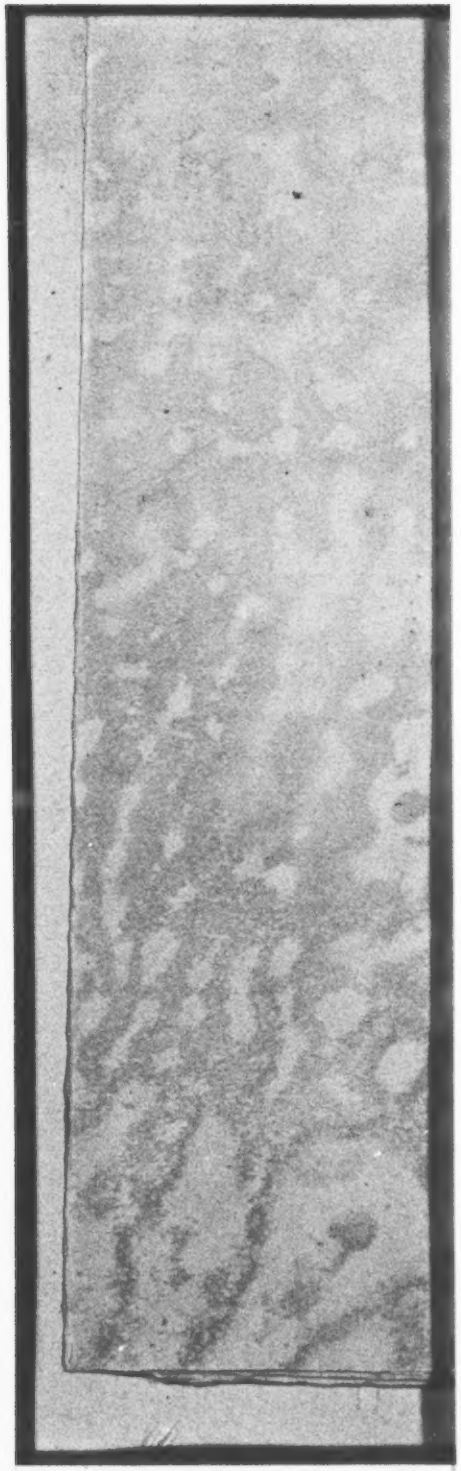
Commonwealth of Pennsylvania.

C. P. Docket No. 489, 1915.
(Year)

Res. Exhibit No. 8.

Hearing Held 12/21/15.
(Date)

H. F. Jolly, Reporter.



CHART

TOO

LARGE

FOR

FILMING

187 (*Endorsement.*)

The Public Service Commission

of the

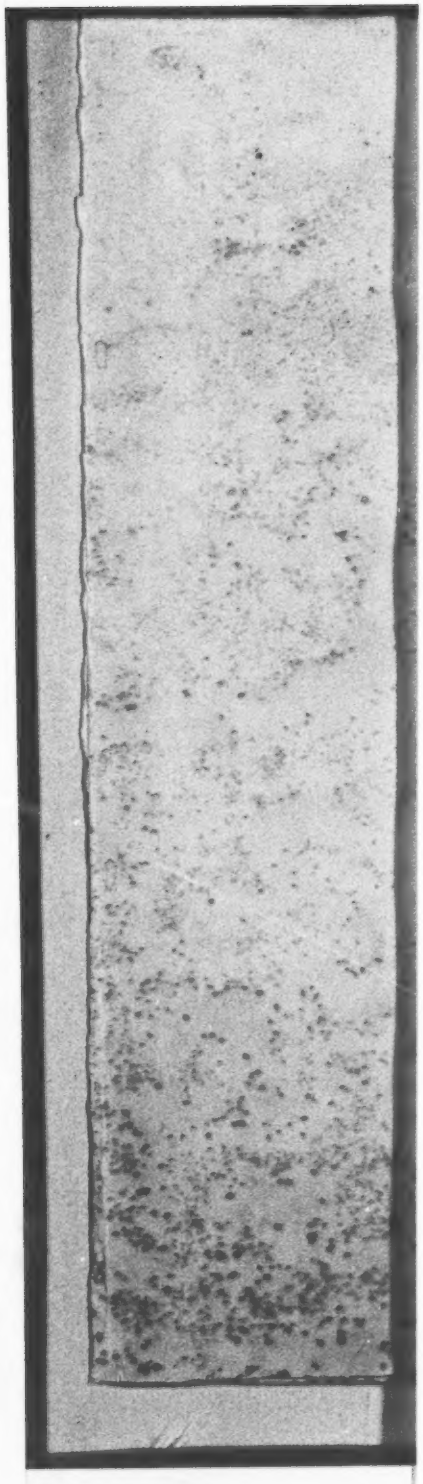
Commonwealth of Pennsylvania.

C. P. Docket No. 489—1915.
(Year)

Res. Exhibit No. 9.

Hearing Held 12/21/15.
(Date)

H. F. Jolly, Reporter.



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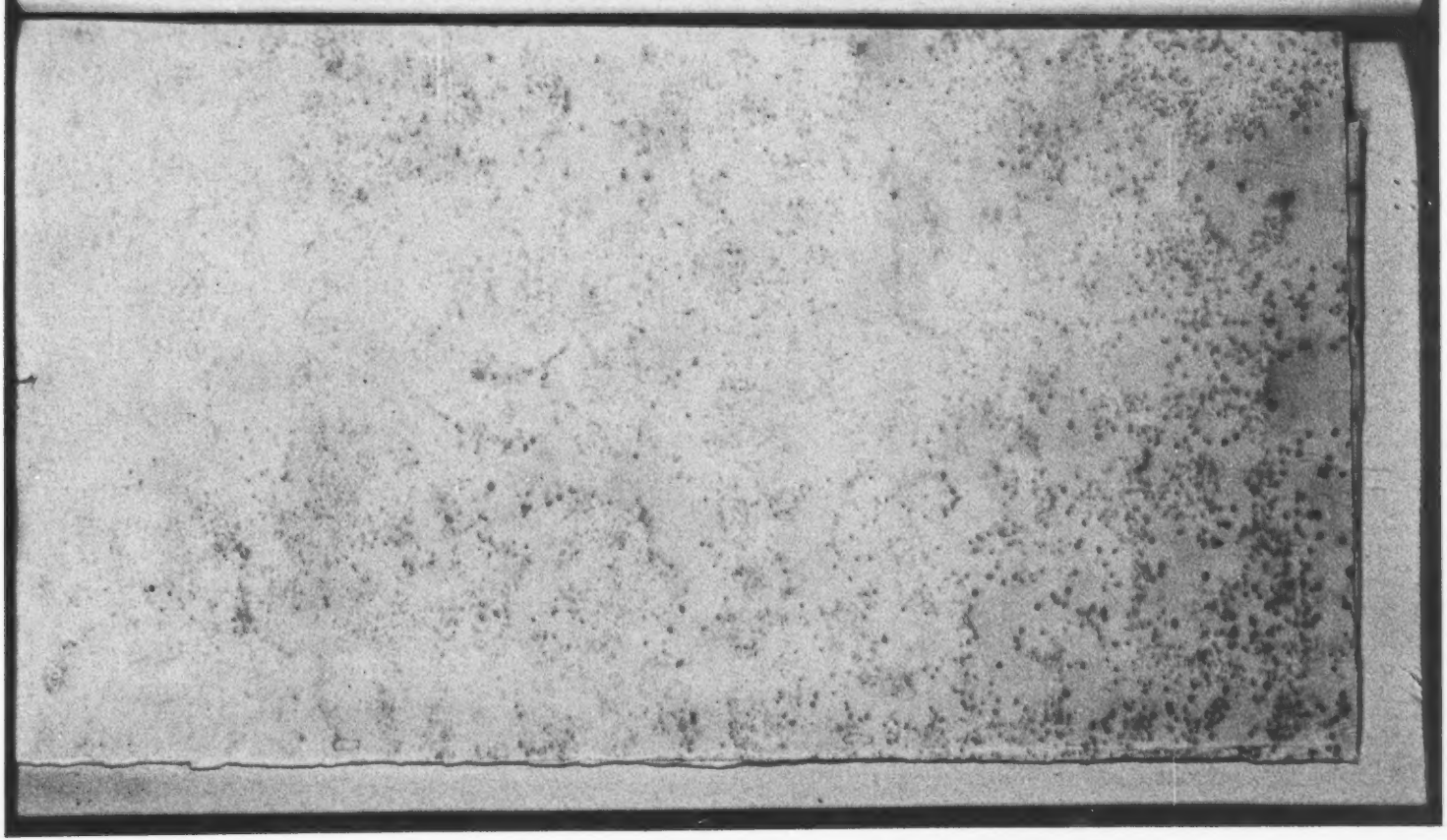


189 (*Endorsement.*)

The Public Service Commission

of the

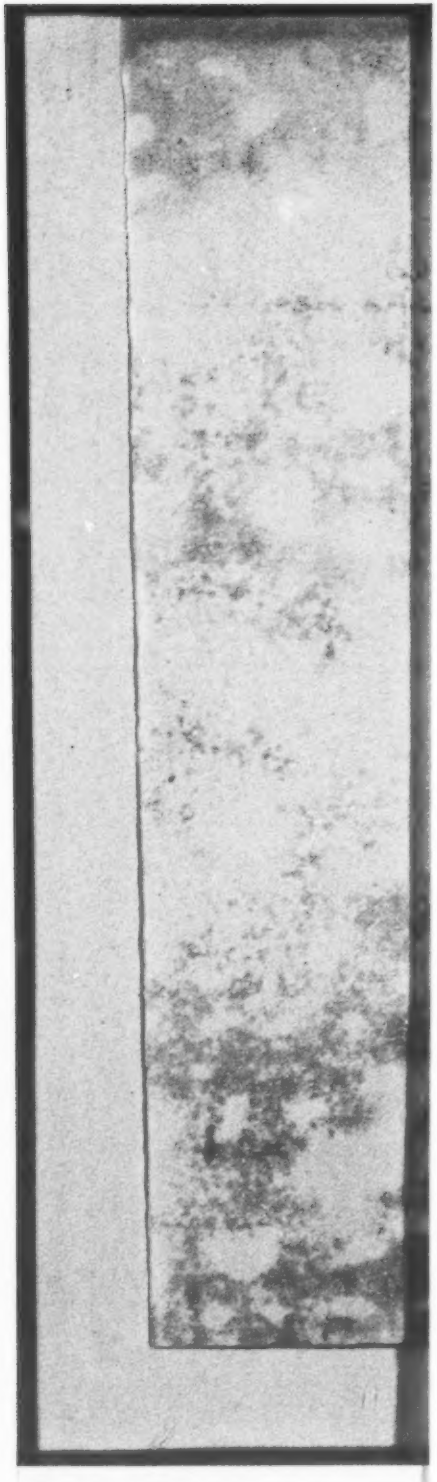
Commonwealth of Pennsylvania.

C. P. Docket No. 489—1915.
(Year)

Res. Exhibit No. 10.

Hearing Held 12/21/15.
(Date)

H. F. Jolly, Reporter.



CHART

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FOR

FILMING

191 (*Endorsement.*)

The Public Service Commission

of the

Commonwealth of Pennsylvania.

C. P. Docket No. 489—1915.
(Year)

Res. Exhibit No. 11.

Hearing Held 12/21/15.
(Date)

H. F. Jolly, Reporter.

192 Superior Court of Pennsylvania Docket Entries.

Among the records and proceedings enrolled in the Superior Court of Pennsylvania, to No. 18, March Term, 1917, is contained the following:

Copy of Superior Court Docket Entry.

No. 489, Complaint Docket, 1915.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,

VS.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Appeal of Plaintiff from the Order, Determination and Finding of the Public Service Commission.

Aug. 11, 1916. Appeal filed.
" " " Petition and appeal by the Pennsylvania Railroad Co., Respondent, filed.
Eo die exit writ rtble. 2nd Monday of March, 1917.
Aug. 16, 1916. Petition for supersedeas filed.

And now, Aug. 17", 1916, the petition of the appellant in the above stated appeal for a supersedeas having been duly presented, a rule is granted upon the Public Service Commission of the Commonwealth of Pennsylvania and the Order of Railway Conductors and Brotherhood of Railway Trainmen to show cause why the prayer of the petitioner should not be granted, rtble. the 2d day of October, 1916, at Philadelphia, to be heard on petition, answer and briefs; the appeal to operate as a supersedeas of the order of the Public Service Commission appealed from during the pendency of said rule.

By THE COURT.
O.

Aug. 23, 1917. Answer of the Public Service Commission filed.
Sept. 28, 1916. Brief of appellant in support of a rule to show cause why the appeal shall not act as a supersedeas filed.

193

Aug. 17, 1916. Record filed.
Sept. 30, 1916. Answer of Public Service Commission filed.
Mar. 12, 1917. Continued to Pittsburgh at foot of Allegheny County list.

By THE COURT.

Mar. 20, 1917. Certified to Pittsburgh Dist. in accordance with above.

Mar. 29, 1917. Petition of Order of Railway Conductors and Brotherhood of Railroad Trainmen to intervene and be made parties to the record filed at Philadelphia.

Mar. 29, 1917. It appearing that an appeal has been perfected in the above stated case, the Order of Railway Conductors and Brotherhood of R. R. Trainmen is granted leave to intervene as a party aggrieved by the decree of the Public Service Commission. Notice to be given to all parties of record.

GEO. B. ORLADY, *P. J.*

May 4, 1917. Argued at Pittsburgh.

Apr. 14, 1917. Petition of the Brotherhood of Railroad Trainmen and Order of Railway Conductors for Modification of Order for Leave to Intervene filed in Western District.

4, 14, '17. The order of March 29, '17 amended as prayed for.

By THE COURT.

O.

Jul- 13, 1917. Order affirmed.

Per ORLADY, *P. J.*

Jul- 26, 1917. Petition of the Pennsylvania Railroad Co. for leave to appeal to Supreme Court filed.

Aug. 1, 1917. Answer of Intervening Appellees filed.

" 6, " Appeal refused.

194 Per CURIAM.

Aug. 10, 1917. Record remitted to Public Service Commission.

" 13, " Record recalled from Public Service Commission.

Nov. 5, " Writ of error from Supreme Court of the United States allowed by Hon. Mahlon Pitney; and Citation from Hon. Mahlon Pitney accepted by Berne H. Evans, Counsel for the Public Service Commission, filed Nov. 9, 1917.

Nov. 5, 1917. Assignment of error filed.

" " " Writ of error bond in the sum of $500.00 filed.

" —, " Record sent to Clerk of the Supreme Court of the United States.

Certified, Nov. 15, 1917:

[Seal of the Superior Court of Pennsylvania.]

WILLIAM PEARSON,
Prothonotary.

195 *Appeal.*

In the Superior Court of Pennsylvania.

The Public Service Commission of the Commonwealth of Pennsylvania.

No. 489, Complaint Docket, 1915.

THE PENNSYLVANIA RAILROAD CO., Appellant,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Enter Appeal on behalf of The Pennsylvania Railroad Co. from the order determination and finding of the Public Service Commission.

To William Pearson, Prothonotary of the Superior Court.

J. E. B. CUNNINGHAM,
Attorney for Appellant.

196 [Endorsed.]

Superior Court of Pennsylvania, March Term, 1917.

No. 13.

The Pennsylvania Railroad Company, Appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania.

Appeal.

J. E. B. Cunningham, Attorneys for Appellant.

—— ——, Attorney for Appellee.

Filed in Superior Court, Aug. 11, 1916. Harrisburg District.

197 In the Superior Court of Pennsylvania.

In the Matter of the Appeal of Respondents from the Finding, Determination, and Order of The Public Service Commission of the Commonwealth of Pennsylvania in "Order of Railway Conductors, Brotherhood of Railroad Trainmen, by S. R. Tarner, Chairman Pennsylvania State Legislative Board, Order of Railway Conductors, vs. The Pennsylvania Railroad Company," to Complaint Docket C. 489, 1915.

Appeal of The Pennsylvania Railroad Company.

Petition and Appeal by the Pennsylvania Railroad Company, Respondent.

To the Honorable the Judges of the Superior Court of Pennsylvania:

The Petition of The Pennsylvania Railroad Company respectfully represents:

First. That The Pennsylvania Railroad Company is a public service corporation of the State of Pennsylvania, duly organized and existing under and by virtue of the laws of said Commonwealth.

Second. That the said The Pennsylvania Railroad Company is now engaged in operating various lines of railroad in the State of Pennsylvania, which lines of railroad run into other states and upon which lines of railroad your petitioner is engaged in operating trains in intra-state and inter-state commerce that carry passengers, express and United States mail.

Third. That your petitioner was respondent in the above proceeding before The Public Service Commission of the Commonwealth of Pennsylvania and is affected by the finding, determination and order made by said Public Service Commission in said proceeding, from which order, finding and determination your petitioner respectfully desires to appeal and from which this appeal is taken.

Fourth. That the aforesaid proceedings were had upon the complaint of the Order of Railway Conductors and Brotherhood of Railroad Trainmen filed with The Public Service Commis-
198 sion of the Commonwealth of Pennsylvania to Complaint Docket C, 489, 1915, which complaint sets forth that on the 9th day of November, 1915, the petitioner ran a train, known as No. 1019, between the cities of Altoona and Pittsburgh, consisting of eight cars, two of which were express cars and six United States mail cars, the rear car of the train, being United States mail car No. 8627, and that this car did not have the rear end equipped as required by section 7 of the Act of Assembly of June 19th 1911, entitled "An Act to promote the safety of travelers and employees upon railroads by compelling common carriers by railroad to properly man their trains," in that the rear end of said United States mail car, being the last car on the train, was not equipped with a platform 30 inches in width and guard rails and steps as required by said section of said Act of Assembly. A copy of said complaint is attached hereto, marked Exhibit "A," and made a part hereof.

Fifth. To the complaint thus filed your petitioner, being the respondent before said Commission, made answer admitting that United States mail car No. 8627 was run as the last car on train No. 1019, but denying that it was necessary to furnish a platform 30 inches in width on this car or that it should have guard rails and steps, and further denying that section seven of the Act of June 19th, 1911, aforesaid, commonly known as the Full Crew Law, was applicable to said United States mail car number 8627. The respondent averred that on the 9th day of November, 1915, it ran

and operated train No. 1019 in compliance with the law applicable thereto and prayed that the complaint be dismissed.

That upon said complaint and answer thus filed the matter came on to a hearing before The Public Service Commission, at and upon which the complainants and respondent, your petitioner, offer in evidence oral testimony and exhibits.

Sixth. That upon the 7th day of July, 1916, a report in said proceeding was filed and an order made by The Public Service Commission, which report and order were served upon respondent
199 July 13, 1916, a true and correct copy whereof is hereto attached and made a part hereof marked Exhibit "B."

By said report and order The Pennsylvania Railroad Company was ordered "to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction, with platform 30 inches in width, and with guard rails and steps."

Seventh. That your petitioner, the above named respondent, therefore presents to your Honorable Court this its petition and appeal as in The Public Service Company Law allowed and, as required by said Act, herein sets forth specifically and concisely the errors assigned to the finding, determination and order of said Commission:

Assignments of Error.

1. Said order of said Commission is not reasonable and is not in conformity with law.

2. Said order is violative of the commerce clause of the Constitution of the United States, being section 8 of Article 1; and in view of existing Federal legislation, rules and regulations—consisting, inter alia, of the Act of Congress of April 14, 1910, 36 Stat. 298, being supplementary to the Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with safety appliances, and the order of the Interstate Commerce Commission dated March 11, 1911, made under the authority of said Safety Appliance Act, and the Federal legislation conferring upon the Postmaster General exclusive powers over the transportation of the mails including the construction, equipment and operation of mail cars—The Public Service Commission of the Commonwealth of Pennsylvania was without power or authority to make said order.

3. Section 7 of the Act of Assembly of the Commonwealth of Pennsylvania, approved June 19th, 1911, commonly known as the Full Crew Law, is suspended with respect to United States
200 Mail cars by the legislation of the Congress of the United States and the Rules of the Postmaster General and the Interstate Commerce Commission, made in pursuance thereof, regulating the construction, maintenance, heating, operation and location in trains of United States mail cars.

4. Said order is in conflict with the Act of Congress defining the safety appliances, including hand holds and steps, to be installed on the mail car No. 8627 and all other mail cars.

5. Said order is in conflict with the Fedral Regulations and specifications defining the width of the platform to be placed on mail car No. 8627 and all other mail cars.

6. Said order is in conflict with the Act of Congress and the regulations and specifications of the Postmaster General and the Interstate Commerce Commission prescribing the kind of steps to be placed on mail car No. 8627 and on all other mail cars.

7. Said order is an invasion of the exclusive control vested in the Postmaster General of the United States over the transportation of the mails and his power to determine, when, where, and how the mails shall be carried.

8. The Public Service Commission of Pennsylvania was without jurisdiction or power to make the order entered in this case.

9. The Public Service Commission erred in finding as follows:

"The Pennsylvania act referred to relates to the running, operating and manning of trains, and not to the construction of United States mail cars, and is therefore in that respect not in conflict with any regulation of the postal service prescribed in pursuance of authority granted by Congress."

10. The Public Service Commission erred in finding as follows:

"There is nothing in these postal regulations requiring the rear end of a train to be a United States mail car; there is positive direction in the Pennsylvania statute prescribing certain provisions to be made on the rear car of any train in order that the safety of those concerned may be assured."

11. The Publice Service Commission erred in holding as follows:

201 "This can, and it was contemplated by the Full Crew Law that it should be accomplished, not by changing the form of construction of mail cars, but by selecting a particular type car for rear end train service. This the respondent has not done, it therefore has violated the provisions of section 7 of the act of June 19, 1911."

12. The Public Service Commission erred in finding and holding as follows:

"Has the Federal Government by legislation assumed jurisdiction and control of the subject matter to the exclusion of the states? We are not persuaded that it has, but here again we must differentiate between the administrative duty and responsibility of The Public Service Commission and the authority of the Courts. It is not for us to set aside the plain statutory provision of our own state. If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government not clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof we must accept and follow administratively the terms and provisions of the act we are charged with the duty of enforcing."

13. The Public Service Commission erred in making and entering the order which reads as follows:

"The Pennsylvania Railroad Company is hereby ordered to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exits free from

obstruction, with platform of thirty inches in width; and with guard rails and steps."

Wherefore, your petitioner prays that your Honorable Court shall find the order appealed from is unreasonable; that the determination and order of the Commission are not based upon sufficient material and competent evidence; that the order and determination are otherwise not in conformity with law; that the said Commission
202 erred in the matters hereinbefore set forth, and that a decree be entered reversing the order of the said Commission.

THE PENNSYLVANIA RAILROAD COMPANY,
By M. TRUMP.

Witness:
LEWIS NEILSON, *Secretary.*

COMMONWEALTH OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the subscriber, a Notary Public in and for said State and City, personally came the above named M. Trump, who, being duly sworn according to law, deposes and says that he is Spec. Asst. to General Manager of the Pennsylvania Railroad Company, the appellant in the above entitled proceeding, and that the facts in the foregoing petition set forth are true and correct, and that this appeal is not taken for the purpose of delay, but because appellant verily believes that injustice has been done.

M. TRUMP.

Sworn and subscribed before this 9th day of August, 1906.

[SEAL.] G. BLIGHT ROBINSON,
Notary Public.

My commission expires March 9th, 1919.

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Copy.

(Serial No. 3192, File No. C489.)

EXHIBIT A.

Complaint.

The Public Service Commission of the Commonwealth of Pennsylvania.

ORDER OF RAILWAY CONDUCTORS, BROTHERHOOD OF RAILROAD TRAINMEN, by S. R. Tarner, Chairman Penna. State Legislative Board, Order Railway Conductors,

VS.

PENNSYLVANIA RAILROAD COMPANY.

Before the Public Service Commission of Pennsylvania.

The petition of the above-named Complainant respectfully shows:

(*a*) That complainant is a passenger Conductor upon the Pittsburgh Division of Pennsylvania Railroad, and Chairman of Pennsylvania State Legislative Board of the Order of Railway Conductors, residing at #6927 Bennett Street, Pittsburgh, Pa. Attorney James Scarlet, Danville, Pa.

(*b*) That the Respondent above-named is a Public Service Company engaged in the railway transportation business in Pennsylvania, and operating a railroad as a common carrier therein.

(*c*) That on the 9th day of November, 1915, the Pennsylvania Railroad Company run a train known as No. 1019, which left Altoona at 5:38 o'clock in the morning and arrived at Pittsburgh at 8:38 o'clock the same morning, consisting of eight (8) cars; two (2) express cars and six (6) United States mail cars. United States mail car No. 8627 was attached to the rear end of the train and this car did not have the rear end equipped as required by section seven (7) of the act of Assembly of June 19, 1915, entitled an "Act to promote the safety of travellers and employes upon railroads by compelling common carriers by railroads to properly man their trains," in that the rear end of the said rear United States mail car was not equipped with a platform thirty inches in width, and guard rails and steps as required by said act of assembly.

204 Wherefore the Petitioner prays that the Respondent may be required to answer the charges herein, and that upon a final hearing hereof, the Commission will make such order in the premises as may seem meet.

Dated at Harrisburg, Pennsylvania, Fifteenth day of November, 1915.

STATE OF PENNSYLVANIA,
Dauphin County, ss:

On this 15" day of Nov., 1915, before me a- alderman, personally appeared S. R. Tarner, the above Complainant, who, being duly sworn according to law, deposes and says that the statements of facts contained in the above complaint are true and correct to the best of his knowledge and belief.

S. R. TARNER.

Sworn and subscribed before me the day and year aforesaid.
[SEAL.] CHAS. EMMET MURRAY, *Ald.*

My commission expires 1st Monday in Jan. 1920.

205 EXHIBIT B.

The Public Service Commission of the Commonwealth of Pennsylvania.

Complaint Docket, No. 489.

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILWAY TRAINMEN, S. R. TARNER,

VS.

PENNSYLVANIA RAILROAD COMPANY.

Report of the Commission.

AINEY, *Chairman:*

Section 7 of the act known as the Full Crew Law, approved June 19, 1911, provides that any train consisting of a United States mail car or express cars shall have the rear end of the rear car equipped "with exit free from obstruction, platform of thirty inches in width, guard rails and steps."

The complaint is that the respondent carrier operates a train over its railroad known as No. 1019 leaving Altoona at 5:38 A. M. and arriving at Pittsburgh at 8:38 A. M., consisting of eight cars, as follows: two express cars and six United States mail cars; that one of the mail cars was placed at the rear of the train and that it did not have the rear end equipped as prescribed by the act in that there was no platform thirty inches wide and no guard rails or steps thereon.

The answer of the respondent admits the allegations of the complaint but denies the conclusion thereof that the same is a violation of the law.

At the hearing and upon argument the respondent maintained that the Congress of the United States had legislated upon this subject and that the rear car upon respondent's train, a United States mail car,

was constructed in accordance with the specifications and requirements of the Post Office department of the United States and that these specifications and requirements being in conflict with section 7 of the act of 1911, the section was void.

The Pennsylvania act referred to relates to the running, operating and manning of trains, and not to the construction of United States mail cars, and is therefore in that respect not in conflict with any regulation of the postal service prescribed in pursuance of
206 authority granted by Congress.

There is nothing in these postal regulations requiring the rear end of a train to be a United States mail car; there is positive direction in the Pennsylvania statute prescribing certain provisions to be made on the rear car of any train in order that the safety of those concerned may be assured.

This can, and it was contemplated by the Full Crew Law that it should be accomplished, not by changing the form of construction of mail cars, but by selecting a particular type car for rear end train service. This the respondent has not done, it therefore has violated the provisions of section 7 of the act of June 19, 1911.

Has the Federal Government by legislation assumed jurisdiction and control of the subject matter to the exclusion of the states? We are not persuaded that it has, but here again we must differentiate between the administrative duty and responsibility of The Public Service Commission and the authority of the Courts. It is not for us to set aside the plain statutory provision of our own state. If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government not clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof we must accept and follow administratively the terms and provisions of the act we are charged with the duty of enforcing.

An order will be issued requiring the respondent to operate its train No. 1019 over its road with the rear end of the rear car thereof equipped with exit free from obstruction; with platform of thirty inches in width and with guard rails and steps.

By the commission:

(Sig.) WM. D. B. AINEY, *Chairman.*

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Complaint Docket 489.

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILWAY TRAINMEN,—S. R. TARNER,

vs.

PENNSYLVANIA RAILROAD COMPANY.

Order.

This matter being before the Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had,

and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof:

Now, to-wit July 7th, 1916, The Pennsylvania Railroad Company is hereby ordered to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction, with platform of thirty inches in width; and with guard rails and steps.

By the commission:

(Sig.) WM. D. B. AINEY, *Chairman.*

Attest:

(Sig.) A. B. MILLAR, *Secretary.*

[SEAL.]

208 *(Endorsement.)*

No. 13. March Term, 1917.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,

VS.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Petition and Appeal.

Filed in Superior Court, Aug. 11, 1916, Harrisburg District.

209 In the Superior Court of Pennsylvania, March Term, 1917.

No. 13.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,

VS.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Petition for Supersedeas.

To the Honorable the Judges of the Superior Court of Pennsylvania:

The Petition of The Pennsylvania Railroad Company respectfully represents:

First. That it is the Appellant in the above entitled appeal, having appealed from the order and determination of The Public Service Commission of the Commonwealth of Pennsylvania entered at Complaint Docket No. 489—1915 in a certain proceeding in which the Order of Railway Conductors and Brotherhood of Railway Train-

men, by S. R. Tarner, were the Complainants and The Pennsylvania Railroad Company was the Respondent.

Second. In and by said complaint the appellant herein was charged with a violation of An Act of Assembly, approved June 19, 1911, P. L. 1043, entitled "An Act to promote the safety of travelers and employees upon railroads by compelling common carriers by railroad to properly man their trains" (commonly called the Full Crew Law); in that appellant, on the 9th day of November, 1915, ran a train known as No. 1019 between the cities of Altoona and Pittsburgh, consisting of eight cars, two of which were express cars and six of which were United States mail cars, the rear car of the train being United States mail car No. 8627, the rear end of which said mail car was not equipped with a platform 30 inches in width
210 and guard rails and steps as required by section 7 of said Act of June 19, 1911.

Third. After a hearing upon said complaint, the said The Public Service Commission of the Commonwealth of Pennsylvania made an order, dated July 7th, 1916, which said order was served upon appellant July 13th, 1916, ordering and directing appellant "to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction, with platform of 30 inches in width, and with guard rails and steps."

Fourth. On the 11th day of August, 1916, appellant duly appealed from said finding order and determination of said The Public Service Commission to your Honorable Court, said appeal being entered to the above number and term.

Fifth. Copies of the original complaint, of the report and order of the Commission and of appellant's appeal petition are hereto attached and made part hereof.

Sixth. Appellant respectfully represents that if it is required, pending the determination of this appeal, to comply with the order of The Public Service Commission appealed from it will be subjected to great and unnecessary inconvenience and expense and will be deprived of what it conceives to be its legal rights.

Seventh. As appears from an inspection of appellant's appeal petition, it contends that the Public Service Commission of the Commonwealth of Pennsylvania had no power to make the order appealed from because, inter alia, the construction, maintenances and operation of all mail cars is exclusively prescribed, governed and controlled by federal legislation, including the Federal Safety Appliance Act, and rules and specifications of the Postmaster General and the Interstate Commerce Commission made under authority of Acts of Congress, and that section 7 of the Full Crew Law of Pennsylvania is suspended with respect to United States mail cars by the
211 federal legislation regulating and controlling their construction and operation.

Eighth. United States mail car No. 8627, specifically referred to in this case, and all other mail cars operated by appellant in Pennsylvania, are constructed and operated in strict accordance with the federal legislation and Federal regulations and specifications govern-

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ing the construction and operation of said mail cars, but none of said mail cars has a platform "of 30 inches in width" as required by section 7 of said Full Crew Law.

Ninth. The only way in which appellant could operate its said train No. 1019 in compliance with the order of said The Public Service Commission would be to attach to the rear end of said train a passenger coach for the sole accommodation of the crew operating said train.

Tenth. United States mail car No. 8627 and all mail cars operated in Pennsylvania by appellant are fully equipped with such platforms and safety appliances as are specified by the federal legislation and federal regulations and specifications with relation to the construction and operation of such cars, and may be operated with entire safety to the train crews of appellant.

Wherefore, Petitioner prays your Honorable Court, in the exercise of the power granted to it by section 19 of Article VI of The Public Service *Company* Law, to enter an interlocutory order making its said appeal a supersedeas of the said order of said The Public Service Commission appealed from.

And it will ever pray, &c.

THE PENNSYLVANIA RAILROAD COMPANY,
By M. TRUMP.

212 COMMONWEALTH OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the subscriber, a Notary Public in and for said State and City, personally came M. Trump, Special Assistant who, being duly sworn according to law, deposes and says that he — to the General Manager of The Pennsylvania Railroad Company, the appellant in the above entitled proceeding, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

M. TRUMP.

Sworn and subscribed before me this 14" day of August, 1916.
[SEAL.] HENRY E. CAIN,
Notary Public.

My commission expires —.

—— ——,
Notary Public.

Commission expires February 21, 1919.

213 In the Superior Court of Pennsylvania.

In the Matter of the Appeal of Respondents from the Finding, Determination, and Order of The Public Service Commission of the Commonwealth of Pennsylvania in "Order of Railway Conductors, Brotherhood of Railroad Trainmen, by S. R. Tarner, Chairman Pennsylvania State Legislative Board, Order of Railway Conductors, vs. The Pennsylvania Railroad Company," to Complaint Docket C, 489, 1915.

Appeal of The Pennsylvania Railroad Company.

Petition and Appeal by the Pennsylvania Railroad Company, Respondent.

To the Honorable the Judges of the Superior Court of Pennsylvania:

The Petition of The Penneylvania Railroad Company respectfully represents:

First. That the Pennsylvania Railroad Company is a public service Corporation of the State of Pennsylvania, duly organized and existing under and by virtue of the laws of said Commonwealth.

Second. That the said The Pennsylvania Railroad Company is now engaged in operating various lines of railroad in the State of Pennsylvania, which lines of railroad run into other states and upon which lines of railroad your petitioner is engaged in operating trains in intra-state and inter-state commerce that carry passengers, express and United States mail.

Third. That your petitioner was respondent in the above proceeding before The Public Service Commission of the Commonwealth of Pennsylvania and is affected by the finding, determination and order made by said Public Service Commission in said proceeding, from which order, findng and determination your petitioner respectfully desires to appeal and from which this appeal is taken.

Fourth. That the aforesaid proceedings were had upon the complaint of the Order of Railway Conductors and Brotherhood of Railroad Trainmen filed with The Public Service Commission of
214 the Commonwealth of Pennsylvania to Complaint Docket C, 489, 1915, which complaint sets forth that on the 9th day of November, 1915, the petitioner ran a train, known as No. 1019, between the cities of Altoona and Pittsburgh, consisting of eight cars, two of which were express cars and six United States mail cars, the rear car of the train, being United States mail car No. 8627, and that this car did not have the rear end equipped as required by section 7 of the Act of Assembly of June 19th, 1911, entitled "An Act to promote the safety of travelers and employees upon railroads by compelling common carriers by railroad to properly man their trains," in that the rear end of said United States mail car, being the last car on the train, was not equipped with a platform 30 inches in width and guard rails and steps as required by said section of said Act of

Assembly. A copy of said complaint is attached hereto, marked Exhibit "A," and made a part hereof.

Fifth. To the complaint thus filed your petitioner, being the respondent before said Commission, made answer admitting that United States mail car No. 8627 was run as the last car on train No. 1019, but denying that it was necessary to furnish a platform 30 inches in width on this car or that it should have guard rails and steps, and further denying that section seven of the Act of June 19th, 1911, aforesaid, commonly known as the Full Crew Law, was applicable to said United States mail car number 8627. The respondent averred that on the 9th day of November, 1915, it ran and operated train No. 1019 in compliance with the law applicable thereto and prayed that the complaint be dismissed.

That upon said complaint and answer thus filed the matter came on to a hearing before The Public Service Commission, at and upon which the complainants and respondent, your petitioner, offered in evidence oral testimony and exhibits.

Sixth. That upon the 7th day of July, 1916, a report in said proceeding was filed and an order made by The Public Service Commission, which report and order were served upon respond-
215 ent July 13, 1916, a true and correct copy whereof is hereto attached and made a part hereof marked Exhibit "B."

By said report and order The Pennsylvania Railroad Company was ordered "to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction, with platform 30 inches in width, and with guard rails and steps."

Seventh. That your petitioner, the above named respondent, therefore presents to your Honorable Court this its petition and appeal as in The Public Service Company Law allowed and, as required by said Act, herein sets forth specifically and concisely the errors assigned to the finding, determination and order of said Commission:

Assignments of Error.

1. Said order of said commission is not reasonable and is not in conformity with law.

2. Said order is violative of the commerce clause of the Constitution of the United States, being section 8 of Article 1; and in view of existing Federal legislation, rules and regulations—consisting, inter alia, of the Act of Congress of April 14, 1910, 36 Stat. 298, being supplementary to the Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with safety appliances, and the order of the Interstate Commerce Commission dated March 11, 1911, made under the authority of said Safety Appliance Act, and the Federal legislation conferring upon the Postmaster General exclusive powers over the transportation of the mails including the construction, equipment and operation of mail cars—the

Public Service Commission of the Commonwealth of Pennsylvania was without power or authority to make said order.

3. Section 7 of the Act of Assembly of the Commonwealth of Pennsylvania, approved June 19th, 1911, commonly known as the Full Crew Law, is suspended with respect to United States
216 Mail cars by the legislation of the Congress of the United States and the Rules of the Postmaster General and the Interstate Commerce Commission, made in pursuance thereof, regulating the construction, maintenance, heating, operation and location in trains of United States mail cars.

4. Said order is in conflict with the Act of Congress defining the safety appliances, including hand holds and steps, to be installed on the mail car No. 8627 and all other mail cars.

5. Said order is in conflict with the Federal Regulations and Specifications defining the width of the platform to be placed on mail car No. 8627 and all other mail cars.

6. Said order is in conflict with the Act of Congress and the regulations and specifications of the Postmaster General and the Interstate Commerce Commission prescribing the kind of steps to be placed on mail car No. 8627 and on all other mail cars.

7. Said order is an invasion of the exclusive control vested in the Postmaster General of the United States over the transportation of the mails and his power to determine when, where, and how the mails shall be carried.

8. The Public Service Commission of Pennsylvania was without jurisdiction or power to make the order entered in this case.

9. The Public Service Commission erred in finding as follows:

"The Pennsylvania act referred to relates to the running, operating and manning of trains, and not to the construction of United States mail cars, and is therefore in that respect not in conflict with any regulation of the postal service prescribed in pursuance of authority granted by Congress."

10. The Public Service Commission erred in finding as follows:

"There is nothing in these postal regulations requiring the rear end of a train to be a United States mail car; there is positive direction in the Pennsylvania statute prescribing certain provisions to be made on the rear car of any train in order that the safety of those concerned may be assured."

11. The Public Service Commission erred in holding as follows:

217 "This can, and it was contemplated by the Full Crew Law that it should, be accomplished, not by changing the form of construction of mail cars, but by selecting a particular type car for rear end train service. This the respondent has not done, it therefore has violated the provisions of section 7 of the act of June 19, 1911."

12. The Public Service Commission erred in finding and holding as follows:

"Has the Federal Government by legislation assumed jurisdiction and control of the subject matter to the exclusion of the states? We are not persuaded that it has, but here again we must differentiate

between the administrative duty and responsibility of The Public Service Commission and the authority of the Courts. It is not for us to set aside the plain statutory provision of our own state. If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government and clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof we must accept and follow administratively the terms and provisions of the Act we are charged with the duty of enforcing."

13. The Public Service Commission erred in making and entering the order which reads as follows:

"The Pennsylvania Railroad Company is hereby ordered to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction, with platform of thirty inches in width; and with guard rails and steps."

Wherefore, your petitioner prays that your Honorable Court shall find the order appealed from is unreasonable; that the determination and order of the Commission are not based upon sufficient material and competent evidence; that the order and determination are otherwise not in conformity with law; that the said Commission
218 erred in the matters hereinbefore set forth, and that a decree be entered reversing the order of the said Commission.

(Sgd.) THE PENNSYLVANIA RAILROAD COMPANY,
By M. TRUMP.

Witness:
(Sgd.) LEWIS NEILSON, *Secretary.*

COMMONWEALTH OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the subscriber, a Notary Public in and for said State, and City, personally came the above named M. Trump who, being duly sworn according to law, deposes and says that he is Spc. Asst. to General Manager of The Pennsylvania Railroad Company, the appellant in the above entitled proceeding, and that the facts in the foregoing petition set forth are true and correct, and that this appeal is not taken for the purpose of delay, but because appellant verily believes that injustice has been done.

(Sgd.) M. TRUMP.

Sworn and subscribed before me this 9th day of August, 1916.

(Sgd.) S. BLIGHT ROBINSON,
[SEAL.] *Notary Public.*

My commission expires March 9th, 1919.

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Copy.

EXHIBIT A.

Complaint.

Serial No. 3192, File No. C 489.

The Public Service Commission of the Commonwealth of Pennsylvania.

ORDER OF RAILWAY CONDUCTORS, BROTHERHOOD OF RAILROAD TRAINMEN, by S. R. Tarner, Chairman Penna. State Legislative Board, Order Railway Conductors,

VS.

PENNSYLVANIA RAILROAD COMPANY.

Before the Public Service Commission of Pennsylvania.

The petition of the above-named Complainant respectfully shows:

(*a*) That complainant is a passenger Conductor upon the Pittsburgh Division of Pennsylvania Railroad, and Chairman of Pennsylvania State Legislative Board of the Order of Railway Conductors, residing at #6927 Bennett Street, Pittsburgh, Pa. Attorney James Scarlet, Danville, Pa.

(*b*) That the Respondent above-named is a Public Service Company engaged in the railway transportation business in Pennsylvania, and operating a railroad as a common carrier therein.

(*c*) That on the 9th day of November, 1915, the Pennsylvania Railroad Company run a train known as No. 1019, which left Altoona at 5:38 o'clock in the morning and arrived at Pittsburgh at 8:38 o'clock the same morning, consisting of eight (8) cars; two (2) express cars and six (6) United States mail cars, United States mail car No. 8627 was attached to the rear end of the train and this car did not have the rear end equipped as required by section seven (7) of the act of Assembly of June 19, 1915, entitled an "Act to promote the safety of travellers and employees upon railroads by compelling common carriers by railroads to properly man their trains," in that the rear end of the said rear United States mail car was not equipped with a platform thirty inches in width, and guard rails and steps as required by said act of assembly.

220 Wherefore the Petitioner prays that the Respondent may be required to answer the charges herein, and that upon a final hearing hereof, the Commission will make such order in the premises as may seem meet.

Dated at Harrisburg, Pennsylvania, Fifteenth day of November, 1915.

STATE OF PENNSYLVANIA,
Dauphin County, ss:

On this 15th day of Nov., 1915, before me a- Alderman, personally appeared S. R. Tarner, the above Complainant, who, being duly sworn according to law, deposes and says that the statements of facts contained in the above complaint are true and correct to the best of his knowledge and belief.

S. R. TARNER.

Sworn and subscribed before me the day and year aforesaid.
[SEAL.] CHAS. EMMET MURRAY.

My Commission expires 1st Monday in Jan., 1920.

221 EXHIBIT B.

The Public Service Commission of the Commonwealth of Pennsylvania.

Complaint Docket No. 489.

ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILWAY TRAINMEN—S. R. TARNER

VS.

PENNSYLVANIA RAILROAD COMPANY.

Report of the Commission.

AINEY, *Chairman:*

Section 7 of the Act known as the Full Crew Law, approved June 19, 1911, provides that any train consisting of a United States mail car or express cars shall have the rear end of the rear car equipped "with exit free from obstruction, platform of thirty inches in width, guard rails and steps."

The complaint is that the respondent carrier operates a train over its railroad known as No. 1019, leaving Altoona at 5.38 A. M. and arriving at Pittsburgh at 8.38 A. M., consisting of eight cars, as follows: two express cars and six United States mail cars; that one of the mail cars was placed at the rear of the train, and that it did not have the rear end equipped as prescribed by the Act in that there was no platform thirty inches wide, and no guard rails or steps thereon.

The answer of the respondent admits the allegations of the complaint, but denies the conclusion thereof that the same is a violation of the law.

At the hearing and upon argument the respondent maintained that the Congress of the United States had legislated upon this subject, and that the rear car upon respondent's train, a United States mail

car, was constructed in accordance with the specifications and requirements of the Post Office Department of the United States, and that these specifications and requirements being in conflict with Section 7 of the Act of 1911, the section was void.

The Pennsylvania Act referred to relates to the running, operating and manning of trains, and not to the construction of United States mail cars, and is therefore in that respect not in conflict with any regulation of the postal service prescribed in pursuance of authority granted by Congress.

222 There is nothing in these postal regulations requiring the rear end of a train to be a United States mail car; there is positive direction in the Pennsylvania statute prescribing certain provisions to be made on the rear car of any train in order that the safety of those concerned may be assured.

This can, and it was contemplated by the Full Crew Law that it should, be accomplished, not by changing the form of construction of mail cars, but by selecting a particular type of car for rear end train service. This the respondent has not done. It therefore has violated the provisions of Section 7 of the Act of June 19, 1911.

Has the Federal Government by legislation assumed jurisdiction and control of the subject matter to the exclusion of the States? We are not persuaded that it has, but here again we must differentiate between the administrative duty and responsibility of The Public Service Commission and the authority of the Courts. It is not for us to set aside the plain statutory provision of our own State. If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government not clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof we must accept and follow administratively the terms and provisions of the Act we are charged with the duty of enforcing.

An order will be issued requiring the respondent to operate its train No. 1019 over its road with the rear end of the rear car thereof equipped with exit free from obstruction; with platform of thirty inches in width, and with guard rail and steps.

By the commission:

(Sig.) WM. D. B. AINEY, *Chairman.*

Order.

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof, made and filed of record its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now, to wit, July 7th, 1916, The Pennsylvania Railroad Company is hereby ordered to operate its train No. 1019 over its road in the State of Pennsylvania with the rear end of the rear car thereof

equipped with exit free from obstruction; with platform of thirty inches in width, and with guard rails and steps.

By the commission:

(Sig.) WM. D. B. AINEY, *Chairman.*

Attest:

(Sig.) A. B. MILLAR, *Secretary.*

[SEAL.]

223 In the Superior Court of Pennsylvania, March Term, 1917.

No. 13.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Order of the Court.

And now, August 17", 1916, the petition of the Appellant in the above stated appeal for a supersedeas having been duly presented, a Rule is granted upon The Public Service Commission of the Commonwealth of Pennsylvania and the Order of Railway Conductors and Brotherhood of Railway Trainmen to show cause why the prayer of the petitioner should not be granted, returnable the 2d day of October, 1916, at Philadelphia, to be heard on petition, answer and briefs; the appeal to operate as a supersedeas of the order of the Public Service Commission appealed from during the pendency of said rule.

BY THE COURT.

O.

224 *(Endorsement.)*

(Page 59.)

In the Superior Court of Pennsylvania, March Term, 1917, No. 13.

The Pennsylvania Railroad Company, Appellant, vs. The Public Service Commission of Pennsylvania.

Petition for Supersedeas

(Order Inside.)

(Oct. 2d, 1916.)

(Regularly on List at Hbg.)

Law Offices

J. E. B. Cunningham,

501-505 Bergner Building,

Harrisburg, Pa.

Filed in Superior Court, Aug. 15, 1916, Harrisburg District.

225 In the Superior Court of the Commonwealth of Pennsylvania, March Term, 1917.

No. 13.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,

VS.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Answer of The Public Service Commission.

To the Honorable the Judges of the Superior Court:

And now, August 22nd, 1916, comes The Public Service Commission of the Commonwealth of Pennsylvania by its counsel and in answer to the petition in appeal filed in this case respectfully says:

That the statements of fact contained in the first, second, third, fourth, fifth and sixth paragraphs of the petition in appeal are believed to be true and correct and that the copies of the complaint filed with this Commission and of the report and order of this Commission attached to the petition and marked Exhibits A and B are

true and correct copies of the originals which have heretofore been certified to this honorable court.

In answer to the specific assignments of error contained in said petition in appeal, The Public Service Commission avers that its order in this case is reasonable and in conformity with law.

It further avers that said order is made in conformity with the duty placed upon this Commission by the 53d Section of Article 6 of The Public Service Company Law to enforce the provisions of the act of June 19, 1911 known as the Full Crew Law, which act was being violated by the appellant in the operation of the train
226 mentioned in this complaint in the manner in which it was shown to have been operated by the testimony heretofore certified to this honorable court.

It is denied that Section 7 of the Act of June 19, 1911 is suspended with respect to the United States mail cars by any legislation of the Congress of the United States or the rules of any federal officer, and it is further denied that the order of the Commission in this case is violative of any act of Congress or rule of any federal authority as set forth in the specifications of error in this appeal.

Wherefore The Public Service Commission of the Commonwealth of Pennsylvania, showing to your honors that its order in this case is made in conformity with the duty placed upon it to carry out the lawful provisions of an act of the General Assembly, prays this honorable court to dismiss the petition in appeal at the cost of the appellant.

And it will ever pray, etc.

THE PUBLIC SERVICE COMMISSION.
BERNE H. EVANS,
Asst. Counsel.

B. H. E.—D.

227 (*Endorsement.*)

No. 13, March Term, 1917.

In the Superior Court of the Commonwealth of Pennsylvania.

The Pennsylvania Railroad Company, Appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania.

Answer of the Public Service Commission.

Filed Aug. 23, 1916, in Superior Court.

Berne H. Evans, Counsel.

228 In the Superior Court of Pennsylvania, Harrisburg District, March Term, 1917.

No 13

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, Appellee.

Brief of the Appellant in Support of a Rule to Show Cause Why the Appeal Shall Not Act as a Supersedeas.

1. Names of the Parties as They Stood on the Record of the Public Service Commission of the Commonwealth of Pennsylvania, and the Nature of the Proceedings.

Order of Railway Train Conductors, Brotherhood of Railroad Trainmen, by S. R. Tarner, Chairman, Pennsylvania State Legislative Board, Order Railway Conductors, vs. The Pennsylvania Railroad Company.

A proceeding before the Public Service Commission of the Commonwealth of Pennsylvania, involving an interpretation of section 7, of the Act of June 19, 1911, known as the Full Crew Law.

2. Abstract of the Complaint and Answer.

The complaint set forth that on the 9th day of November, 1915, the Pennsylvania Railroad Company ran a train known as No. 1019, between the cities of Altoona and Pittsburgh, consisting of eight cars, two of which were express cars, and six United States Mail cars, the rear car of the train being United States Mail car No. 8627, and that this car did not have the rear end equipped as required by section 7, of the Act of Assembly of June 19, 1911, in that the rear end of said United States Mail car was not equipped with a platform thirty inches in width, and with guard rails and steps as required by said section of said Act of Assembly.

The answer of the Pennsylvania Railroad Company admitted that United States Mail car No. 8627 was run as the last car of train No. 1019, but denied that it was necessary to furnish a platform thirty inches wide on this car, or that it should have guard
229 rails and steps, and further denied that section 7 of the Act of June 19, 1911, was applicable to said United States Mail car No. 8627. The Pennsylvania Railroad Company further averred that on the day in question it ran and operated Train No. 1019 in compliance with the law applicable thereto and prayed that the complaint be dismissed.

3. Order of the Commission.

After the hearing upon the complaint the Public Service Commission ordered The Pennsylvania Railroad Company "to operate its train No. 1019 over its road within the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction with platform thirty inches in width, and with guard rails and steps."

A. petition for an appeal and assignments of error were filed by the Appellant within thirty days from the date of service of the report and order of the Commission and immediate notice of the filing thereof was given to the Public Service Commission. Thereafter the Appellant filed a petition with the Honorable Court praying that the appeal be a supersedeas, whereupon a rule was granted upon the Public Service Commission of the Commonwealth of Pennsylvania and the Order of Railway Conductors and the Brotherhood of Railway Trainmen to show cause why the prayer of the petitioner should not be granted. Copies of the order were served upon the Public Service Commission and Counsel for the other parties therein named.

4. Statement of Questio. ' Involved.

Shall the prayer of the petition that the appeal act as a supersedeas be granted?

5. History of the Case.

Testimony was introduced to show that train No. 1019, on the day in question consisted of two Express cars and six United States Mail cars, with United States Mail car No. 8627 on the rear of the train. No car in the train was constructed with a
230 thirty inch platform. The train was carrying United States Mail on an interstate trip from the State of New York into and through the State of Pennsylvania, in accordance with an arrangement or contract with the Federal Government duly authorized by the laws of the United States to which brief reference will hereinafter be made. The car in question is an all steel, full mail car, required by Act of Congress to be furnished by the Railroad for Mail Service and built in accordance with the specifications of the Postoffice Department and the Interstate Commerce Commission, and with the appliances required by the Safety Appliance Acts. The said specifications were expressly authorized by Acts of Congress to which reference will hereinafter be made. There is no dispute that the car was built in accordance with these Federal regulations. The car was fully equipped with the standard platforms, sill loop steps, hand holds, marker brackets, heating fixtures and all the safety appliances prescribed by the aforesaid Acts of Congress and specifications.

General Powers of the Postmaster General.

The powers of the Postmaster General, as shown by the evidence offered by the Appellant, include the power to arrange mail routes with the Railroads of the United States, over which mail is to be carried and the power to establish rates of pay, Act of June 8, 1872, c. 335, paragraph 309—211, R. S. 3997, 3998. The power to decide upon what trains and in what manner mail shall be conveyed, Act of March 3, 1879, 20 Stats. 58, also the power to require railroads, when directed, to carry mail upon any trains they may run over their roads, Act of June 8, 1872, R. S. 4000. The power to adjust the compensation of railroads upon conditions which require the mails to be carried with due frequency and speed, and that sufficient and suitable rooms, fixtures and furniture be provided in cars which are properly lighted and warmed, Act of March 3, 1873, c. 231, paragraph 1, R. S. 4002. The right to deprive the railroads of compensation for failure to furnish suitable cars, Act of March 3, 1873, R. S. 4003. The right to reduce the pay of railroads for failure to carry the mail when required upon their fastest trains, Act of July 5, 1884, 23 Stat. 156. The power to require railroads to furnish railway postoffice cars, safety heaters, etc., and reduce their compensation for failure to do so, Act of March 1, 1881, c. 96, paragraph 1, R. S. 4004. The power to deprive the railroads of compensation unless full postoffice cars fully equipped in accordance with the requirements of the General Superintendent of Railway Mail Service are furnished and used exclusively for postoffice purposes, Act of March 3, 1873, R. S. 4002. The power to reduce compensation of carriers where they fail to keep their schedules, Act of June 8, 1872, R. S. 3962, and the power to fine the railroads for setting aside the mail and giving passengers, baggage, freight or other matter precedence over the mails.

231

Powers of Postmaster General to Require Cars of Type in Question.

The Act of March 13, 1879, c. 180, paragraph 4, R. S. 4005, provides:

"All cars or parts of cars used for railroad mail service shall be of such style, length and character, and furnished in such manner as shall be required by the Postmaster General, and shall be constructed, fitted up, maintained, heated and lighted by and at the expense of the railroad companies."

Under the authority thus given the Postmaster General prepared specifications for United States Mail cars, and Car 8627 was constructed in accordance therewith. These specifications cover inter alia the end construction consisting of a ten inch platform, loop steps, hand holds, signal brackets and heating. And these specifications include and adopt the United States Safety Appliance standards covering the said steps, hand holds and signal brackets.

The Acts of Congress of March 4, 1911, 36 Stat. 1335, and of

August 24, 1912, 27 Stat. 547, provided for the general withdrawal of all wood and partly wood mail cars, and for the substitution of the steel cars.

232 Congress Has Authorized the Use of the Full Steel Mail Car in Any Part of a Train.

The Act of March 4, 1911, 36 Stat. 1335, prohibited the use of any mail car not constructed in accordance with the specifications, or constructed of wood, in certain parts of trains, and provided, as did the Act of August 24, 1912, 27 Stat. 547, for the withdrawal of all such cars and for the substitution of all steel cars for this service.

There are no restrictions concerning the use of these cars in any part of the train.

Powers of Interstate Commerce Commission Under Safety Appliance Acts.

By a series of Acts known as the Safety Appliance Acts, also offered in evidence, Congress has prescribed the kind of appliances to be placed on railroad cars of all descriptions, and by the third section of the Act of April 14, 1910, c. 160, 36 Stat. 298, the power was given to the Interstate Commerce Commission to designate the number, dimensions, locations and manner of application of the appliances provided for. The Interstate Commerce Commission acting under this power prescribed certain specifications which covered inter alia the width of the platforms, guard rails and steps. It was admitted at the hearing that this car was built under these specifications.

The testimony further shows that the purpose of the narrow platform, specified by the Federal authorities, was to facilitate the work of the Mail Clerks in moving mail from one car to another, and to avoid accidents in performing this work as well as to give the employees of the railroads safe appliances with which to perform their duties at the rear platform of the rear car of the train.

Make Up of the Train.

Train 1019 complained of came in to Broad Street Station, Philadelphia, from New York for the purpose of collecting mail and express matter, with Mail car 8627 the leading car and followed by five other mail cars and two express cars on the rear. When
233 the mail and express was loaded, an engine was attached to the rear end of the train, which then became the front end, and the train pulled out in the reverse order, which placed Mail car 8627 at the rear of the train for the journey from Philadelphia to Pittsburgh. Neither the express cars or the mail cars in this train had thirty inch platforms.

Opinion of Commission.

"ORDER OF RAILWAY CONDUCTORS and BROTHERHOOD OF RAILWAY TRAINMEN, — S. R. TARNER,

vs.

THE PENNSYLVANIA RAILROAD COMPANY.

Report of the Commission.

AINEY, *Chairman:*

Section 7 of the Act known as the Full Crew Law, approved June 19, 1911, provides that any train consisting of a United States mail car or express cars shall have the rear end of the rear car equipped "with exit free from obstruction, platform of thirty inches in width, guard rails and steps."

The complaint is that the respondent carrier operates a train over its railroad known as No. 1019, leaving Altoona at 5.38 A. M. and arriving at Pittsburgh at 8.38 A. M., consisting of eight cars, as follows: two express cars and six United States mail cars; that one of the mail cars was placed at the rear of the train, and that it did not have the rear end equipped as prescribed by the Act in that there was no platform thirty inches wide, and no guard rails or steps thereon.

The answer of the respondent admits the allegations of the complaint, but denies the conclusion thereof that the same is a violation of the law.

At the hearing and upon argument the respondent maintained that the Congress of the United States had legislated upon this subject, and that the rear car upon respondent's train, a United States mail car, was constructed in accordance with the specifications and requirements of the Post Office Department of the United States, and that these specifications and requirements being in conflict with Section 7 of the Act of 1911, the section was void.

The Pennsylvania Act referred to relates to the running, operating and manning of trains, and not to the construction of United States mail cars, and is therefore in that respect not in conflict with any regulation of the postal service prescribed in pursuance of authority granted by Congress.

234 There is nothing in these postal regulations requiring the rear end of a train to be a United States mail car; there is positive direction in the Pennsylvania statute prescribing certain provisions to be made on the rear car of any train in order that the safety of those concerned may be assured.

This can, and it was contemplated by the Full Crew Law that it should, be accomplished, not by changing the form of construction of mail cars, but by selecting a particular type of car for rear end train service. This the respondent has not done. It therefore has violated the provisions of Section 7 of the Act of June 19, 1911.

Has the Federal Government by legislation assumed jurisdiction and control of the subject matter to the exclusion of the States? We are not persuaded that it has, but here again we must differentiate between the administrative duty and responsibility of The Public Service Commission and the authority of the Courts. It is not for us to set aside the plain statutory provision of our own State. If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government not clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof we must accept and follow administratively the terms and provisions of the Act we are charged with the duty of enforcing.

An order will be issued requiring the respondent to operate its train No. 1019 over its road with the rear end of the rear car thereof equipped with exit free from obstruction; with platform of thirty inches in width, and with guard rail and steps.

Order.

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed of record its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now, to wit, July 7th, 1916, The Pennsylvania Railroad Company is hereby ordered to operate its train No. 1019 over its road in the State of Pennsylvania with the rear end of the rear car thereof equipped with exit free from obstruction; with platform of thirty inches in width, and with guard rails and steps.

By the Commission:

WM. D. B. AINEY, *Chairman.*

Attest:

[SEAL.] A. B. MILLAR, *Secretary.*

235 *Argument.*

This appeal in order to avoid great injustice being done to the Appellant should be a supersedeas. The record establishes the fact that the Congress of the United States has regulated each of the matters and things attempted to be regulated by the seventh section of the Act of 1911 of the State of Pennsylvania.

Congress has required the Pennsylvania Railroad Company to furnish United States Mail cars of the type of No. 8627 for the mail service with platform ten inches wide, not thirty inches, as required by the State Law, constructed inside and outside in accordance with certain specifications, and with hand holds and loop steps, and heated so as to meet the requirements of the Postmaster General.

Furthermore the steel car was required by the Department so that it could be used in any part of the train.

The seventh section of the Full Crew Law provides:

"It shall be unlawful for any railroad company to run or operate over its road any train consisting of United States mail or express cars without the rear end of the rear car so equipped with exit free from obstructions, platform of thirty inches in width, guard rails and steps, also heating appliances to maintain a temperature of sixty-five degrees."

We have, therefore, on the one hand complete regulation by Congress of the entire subject matter with the express power given to the Postmaster General of fining the Appellant for failure to comply with the regulations, and on the other, we have the State of Pennsylvania attempting to regulate trains carrying United States Mail and prescribing the kind of cars to be used in these mail trains, and calling for appliances of a different kind and character from those required by Congress. Under the State Law the Appellant is also subject to a heavy fine for its failure to comply with the State requirements. Surely with the conflicting claims of jurisdiction over the subject matter the Appellant should not be required to comply with both the Federal and State Laws, even if this were possible,
which is not the case. Assuming, however, that the regula-
236 tions were not conflicting and that it were possible to comply
with both, the Appellant has been advised that the Federal regulations govern the entire subject, and has spent many thousands of dollars in order to comply with the Federal requirements.

The power of Congress to regulate commerce between the States is, of course, conceded by all, and when Congress acts upon a given subject the power of the State to regulate the same subject is superseded. A State can not supplement, add to or detract from any safety regulation which Congress has adopted. The mere fact that Congress acted at all on this subject is conclusive proof that it acted thoroughly and reached the conclusion that no further regulations affecting the make up of trains or design of the cars were necessary in order to insure the safety of all those connected with the trains.

In the case of Brigg vs. Commonwealth of Pennsylvania, 16, 539-617, the Supreme Court of the United States says:

"In such a case the legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. * * * The will of Congress upon the whole subject is as clearly established by what it has not declared as by what it has expressed."

And, again, in the case of Erie R. R. Co. vs. The People of New York, 233 U. S. 671, the Supreme Court of the United States says, page 683:

"It is not that there may be division of the field of regulation but an exclusive occupation of it when Congress manifests a pur-

pose to enter it * * *. It admits of no supplement. It is the prescribed measure of what is necessary and sufficient for the public safety and of the cost and burden which the railroad must endure to secure it."

And, again, on page 681, the Supreme Court says:

"Where there is conflict, the State legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority the regulating power of the State ceases to exist."

The seventh section of the Act of 1911 is, therefore, under these and numerous other similar decisions of the Supreme Court of the United States, superseded, and being superseded is unen-
237 forcible, and if the Appellant is required to obey the order of the Honorable Commission until such time as this Honorable Court could fully hear and determine the questions involved in this case, a grave injustice would be done and a serious loss incurred by this Appellant.

A compliance with the order of the Honorable Public Service Commission would involve serious inconvenience and in all probability would subject the Appellant to fines and penalties imposed by the Postmaster General for failure to maintain its schedules.

Broad Street Station is not on the direct line of the Appellant's railroad, but is located on the east side of the Schuylkill River, and is connected with the main line by elevated tracks, which end at the station.

Trains coming into Broad Street Station, if they are through trains, leave the station with the cars in the reverse order. The locomotive drawing the train into the station is cut off and a new engine is attached to what was the rear end of the train. The train, therefore, continues its journey with the car which was the first car of the train when it entered the station, the last car in the train when it departs from the station.

To rearrange the order of the cars, or to add a car to the train, would require the movement of the train from Broad Street Station to the yards in West Philadelphia where switching tracks are available. Such a maneuver would result in a serious delay to train No. 1019 and similar trains. This train is a heavy mail and express train, and is one of the fastest and most important trains operated by the Pennsylvania Railroad Company. Its schedule, as required by the Postmaster General, is a difficult one to maintain, and under the Federal Acts the failure to maintain the schedule, or the failure to carry all the mail offered by the Postoffice Department for this train, is punishable by a heavy fine.

In its opinion the Commission suggests that a car other
238 than a mail car but with a thirty-inch platform be run as the last car of this train. To comply with this suggestion would require the switching of this train as above described. It would, however, place the Railroad Company at a further disadvantage in that each additional car in a train tends to retard it and increases the possibility of delays, due to hot boxes and other causes,

and, furthermore, if for any cause the train should be delayed the additional cars would lessen the chances of the lost time being made up, and would increase the risk of fines and penalties being imposed for such delays.

Your petitioner if forced to comply with the order until the questions involved in this appeal are determined would incur additional expense in operating its mail trains without additional compensation, and it would be unable, in the event of this appeal being determined in its favor, to recoup such losses.

The operation of a train with one additional car obviously requires the use of more power, and the consumption of more coal. It involves the wear and tear upon such car and the cleaning, inspection and repairs before each trip, and your petitioner believes that it is not required under the law to run or operate on its mail trains any car other than the cars provided for under the Federal Laws and required to be furnished for the carrying of the mail, and, therefore, the expense incident to complying with the order would be an expense which it fully expects after this Court has had an opportunity to hear and determine the questions at issue, it would not be required to incur.

Conclusion.

It is therefore respectfully submitted that the prayer of the petitioner asking that the appeal be a supersedeas, and that it be
239 relieved from complying with the order of the Public Service Commission of the Commonwealth of Pennsylvania until the appeal be decided by this Honorable Court, be granted.

J. E. B. CUNNINGHAM,
CHARLES H. BERGNER,
S. B. LLOYD,
G. S. PATTERSON,
Of Counsel.

240 (*Endorsement.*)

(Page 59.)

13, March T., 1917.

Superior Court.

74-75.

Pennsylvania R. R. Co., Appellant, vs. Public Service Comm.

Rule for Supersedeas.

Brief of Appellant.

Filed Sep. 29, 1915, in Superior Court.

Filed in Superior Court, Sep. 28, 1916, Harrisburg District.

241 In the Superior Court of Pennsylvania, March Term 1917.

No. 13.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,

VS.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Answer to the Petition for Supersedeas.

To the Honorable the Judges of the Superior Court of Pennsylvania:

The answer of The Public Service Commission of the Commonwealth of Pennsylvania to the petition for a supersedeas filed in this case respectfully represents:

That the order of the Commission in this case was served upon the appellant July 13, 1916, and directs it to operate a certain train "with the rear end of the rear car thereof equipped with exit free from obstruction, with platform of thirty inches in width and with guard rails and steps."

This order was made after hearing in compliance with the 53rd section of Article 6 of The Public Service Company Law, and is a direction to the carrier to operate its train in compliance with the requirements of what is known as the Full Crew Law, which was approved by the Governor on June 19, 1911. Presumably from 1911 to date the carrier has been disobeying the law, and it now asks the Court to permit it to continue to disobey the law until such time as this Court shall decide the appeal. The order of the Commission was made after careful consideration and is presumably lawful. The Public Service Company Law in Section 23 of Article 6 in dealing with cases appealed, says: "In all such cases the orders of the commission shall be prima facie evidence of the reasonableness thereof, and the burden of proving the contrary shall be upon the appellant or appellants."

242 The appellant contends that the only way in which it could operate its train in compliance with the order of the Commission would be to attach to the rear end of said train a passenger coach for the sole accommodation of the crew operating said train. It is respectfully contended that the evidence does not disclose this to be the case. The appellant can attach to the rear of the train an express car or any other kind of a car except a United States mail car, and thus comply with the order of the Commission and its interpretation of the Full Crew Law.

The Public Service Commission denies the statement that compliance with this order will subject the carrier to great and unnecessary inconvenience and expense, and alleges that the expense made necessary will be comparatively small and should willingly be borne by the carrier for the reason that it took the appeal in this case to

the March 1917 term of this Court, when it could just as readily have entered its appeal in this term of Court and had the same disposed of at the argument which begins today.

The Public Service Commission therefore respectfully prays this Honorable Court to refuse the prayer of the petition to make the appeal in this case a supersedeas, and it will ever pray, etc.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA,
By BERNE H. EVANS,
Assistant Counsel.

9/30/16.
4.

243

(Endorsement.)

(Page 59.)

No. 13, March Term, 1917.

In the Superior Court of Pennsylvania.

The Pennsylvania Railroad Company (Appellant) vs. The Public Service Commission of the Commonwealth of Pennsylvania (Appellee).

Answer of The Public Service Commission of the Commonwealth of Pennsylvania.

Filed Sep. 30, 1916, in Superior Court.

Berne H. Evans, Asst. Counsel.

244

Certificate of Transfer.

In the Superior Court of Pennsylvania in and for the Harrisburg District, March Term, 1917.

No. 13.

THE PENNSYLVANIA RAILROAD COMPANY, Appellant,
vs.
THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Appeal from the Public Service Commission of Pennsylvania.

No. 489, Complaint Docket, 1915.

Aug. 11, 1916. Appeal filed.
" " " Petition and appeal by the Pennsylvania Railroad Co., Respondent, filed.

11—783

Aug. 11, 1916. Eo die exit writ rtble. second Monday of March, 1917.

Mar. 12, 1917. Continued to Pittsburgh at foot of Allegheny County list.

BY THE COURT.

Hon. J. E. B. Cunningham, Harrisburg, Pa.,
For Appellant.
Berne H. Evans, Esq., " "
For Appellee.

True Copy from the Record.

In testimony whereof, I have hereunto set my hand and the seal of Court, at Harrisburg this 20th day of March, A. D. 1917.

[SEAL.] WILLIAM PEARSON,
Prothonotary.

245 [Endorsed.]

No. 13.

Superior Court, March Term, 1917.

The Pennsylvania Railroad Company, Appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania.

Certificate of Transfer.

Filed Mar. 21, 1917, Supreme Court, W. D.

246 To the Honorable George B. Orlady and his associates, Judges of the Superior Court of Pennsylvania:

The petition of the Order of Railway Conductors and Brotherhood of Railroad Trainmen by S. R. Tarner, respectfully represents:

(1) That your petitioners were the complainants before the Public Service Commission of Pennsylvania against the Pennsylvania Railroad Company—Complaint Docket No. 489, in which the said commission entered a decree in favor of complainants.

(2) That the said Defendant Railroad Company has appealed from the said decree to your Honorable Court to No. 13, March Term 1917.

(3) That your petitioners showing that they are the real parties in interest pray that they may be allowed to intervene and be made parties to the record in said appeal.

And they will ever pray, etc.

ORDER OF RAILWAY CONDUCTORS &
BROTHERHOOD OF R. R. TRAINMEN,
By S. R. TARNER.

Mar. 29,1917.

It appearing that an appeal has been perfected in the above stated case the Order of Railway Conductors and Brotherhood of R. R.

Trainmen is granted leave to intervene as a party aggrieved by the decree of the Public Service Commission. Notice to be given to all parties of record.

GEO. B. ORLADY, *P. J.*

247 STATE OF PENNSYLVANIA,
Dauphin County, ss:

S. R. Tarner being duly sworn according to law deposes and says that the facts set forth in the foregoing petition are true.

SAMUEL R. TARNER.

Sworn and Subscribed before me this 28th day of March, 1917.
[SEAL.]

JAMES G. HATZ,
Notary Public.

My commission expires Jany. 30, 1919.

248 *(Endorsement.)*

(Page 103.)

In the Superior Court, No. 13, March Term 1917.

Pennsylvania Railroad Co. vs. Public Service Commission.

Petition of Order of Railway Conductors and Brotherhood of Railroad Trainmen, to Intervene and be Made Parties to the Record.

Order Inside.

And now —, 1917, the within petition read and considered and it is ordered —.

Filed Mar. 29, 1917, In Superior Court.

James Scarlet, Attorney for Petitioners, Danville Penna.

249 In the Superior Court of Pennsylvania in and for the Harrisburg District, March Term, 1917.

No. 13.

PENNSYLVANIA RAILROAD COMPANY, Appellant,

vs.

PUBLIC SERVICE COMMISSION, Appellee.

Appeal from the Public Service Commission of Pennsylvania, #489, Complaint Docket, 1915.

Petition of the Brotherhood of Railroad Trainmen and Order of Railway Conductors for Modification of Order for Leave to Intervene.

To the Honorable the Judges of the Superior Court of Pennsylvania:

Your petitioners, the Brotherhood of Railroad Trainmen and Order of Railway Conductors, respectfully represent:

1. That your petitioners were the parties complainand in the proceedings before the Public Service Commission of the Commonwealth of Pennsylvania from the final determination and order in which the above appeal has been perfected by the appellant, the Pennsylvania Railroad Company, which was the respondent in said proceedings before said Commission.

2. That the party claiming to be aggrieved or adversely affected by said determination and order of said Commission is the Pennsylvania Railroad Company, the said appellant.

3. That your petitioners as the parties complainant in said proceedings before the Commission and therefore as real parties in interest therein desire leave to intervene as parties defendant or appellees along with said Commission, and to join in the defense of the determination and order of said Commission at issue in the said appeal.

250 4. That on, to wit, March 29th, 1917, upon a petition of your petitioners previously filed, your Honorable Court entered an order permitting your petitioners to intervene as aforesaid, but through some inadvertence, as we submit, referred in said order to your petitioners as "a party aggrieved by the decree of the Public Service Commission." The said order reads as follows:

"It appearing that an appeal has been perfected in the above stated case the Order of Railway Conductors and Brotherhood of R. R. Trainmen *is* granted leave to intervene as a party aggrieved by the decree of the Public Service Commission. Notice to be given to all parties of record."

Wherefore and in order that said inadvertence may be corrected of record, your petitioners respectfully pray that your Honorable Court amend the order above referred to and heretofore entered in said case, so as to allow your said petitioners as the parties complainant in the proceedings before said Commission to intervene as parties defendant or appellees, and to join with said Commission in the defense of the order at issue as provided in Article 6, Section 20 of the Public Service *Company* Law.

And your petitioners will ever pray, etc.

ORDER OF RAILWAY CONDUCTORS & BROTHERHOOD OF RAILROAD TRAINMEN,

By WM. N. TRINKLE, *Atty. for Petitioners.*

251 *Decree.*

And now, to wit, April —, 1917, on consideration of the within and foregoing petition, the order made March 29, 1917, granting leave to the Brotherhood of Railroad Trainmen and Order of Railway Conductors to intervene in said Appellate proceedings, is hereby amended so as to read as follows:

"It appearing that an appeal has been perfected in the above stated case, the Brotherhood of Railroad Trainmen and Order of Railway Conductors are granted leave to intervene as parties defendant or appellees, and to join in the defense of the determination and order of the Public Service Commission at issue in said appeal.

Notice to be given to all parties of record."

252 (*Endorsement.*)

In the Superior Court of Pennsylvania in and for the Harrisburg District, March Term, 1917.

No. 13.

(Appeal from the Public Service Commission of Pennsylvania, #489, Complaint Docket, 1915.)

Pennsylvania Railroad Company, Appellant, vs. Public Service Commission, Appellee.

Petition of the Brotherhood of Railroad Trainmen and Order of Railway Conductors for Modification of Order for Leave to Intervene.

4, 14, '17. The Order of March 29, '17, Amended as Prayed for. By the Court. O.

Filed Apr. 14, 1917. Superior Court, W. D.

William N. Trinkle, 1331 Land Title Bldg., Phila., Pa.

253 *Opinion of Superior Court of Pennsylvania.*

No. 474.

March Term, 1917.

No. 13.

PENNSYLVANIA RAILROAD COMPANY

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

Appeal from the Findings and Order of The Public Service Commission of Pennsylvania.

Opinion by ORLADY, *P. J.*:

The complaint in this case alleges that the Pennsylvania Railroad Company ran a certain train from Altoona to Pittsburgh, consisting of eight (8) cars,—two (2) express cars and six (6) United States mail cars, with the mail car attached to the rear end of the train, and did not have the rear car equipped as required by section 7, of the Act of June 19, P. L. 1053, which is as follows: "That it shall be unlawful for any railroad company, its officers or agents,

officers of court, receivers, or any person or persons, doing business in this Commonwealth, to run or operate over its road, or any part of its road, any train consisting of United States mail or express cars, without rear end of the car being equipped with exit or
254 observation platform of 30 inches in width, guard-rails; also heat appliance to maintain a temperature of 65 degrees."

While the argument in this case covered many interesting questions, our decision is limited to the exact and undisputed facts presented by the record. The order appealed from is as follows: "The Pennsylvania Railroad Company is hereby ordered to operate its train No. 1019, over its road within the State of Pennsylvania, with the rear end of the rear car thereof equipped and free from obstructions, with platform of 30 inches in width, and with guardrails and steps."

The description of the equipment for the rear end of the rear car is intended to comply with that required by the Act of June 19, 1911, above quoted, and is as definitely intended to prohibit the rear end equipment which is admitted to be that of the specified full steel United States mail cars that the railroad company was required to furnish under Federal regulations. These mail cars are constructed in strict conformity with the specifications issued by the Postmaster General, and there is no challenge to the Federal authority to make such regulations and to insist on such performance. That question is not in dispute.

We are not concerned with the wisdom, policy or expediency of this act of the Legislature. Nor can we consider in this case, whether the provisions and requirements of the act are unreasonable and arbitrary and within the power of the Legislature of this Commonwealth to enact. That proposition was fully considered in Penna. R. R. Co. v. Ewing, 241 Pa. 581, and was therein, so far as this court is concerned, conclusively decided by holding that the act in question was a valid exercise of the police power of the Commonwealth, as such violates no provision of either the Constitution of Pennsylvania or the Constitution of the United States.

255 The right of Congress, through the Post Office Department, to define the kind of a car to be furnished by the railroad company for transmission of mails, is not challenged by the appellant, and there is nothing in the order made by the Public Service Commission defining the place in the train which the mail car is to take. That is a matter to be decided by the railroad company in the discharge of its carrier's duty. The thing provided by the statute is, that a mail car constructed in accordance with the regulations of the Post Office Department shall not be the last car in the train, unless it has the rear end equipment prescribed by our Act of June 19, 1911. Considerable testimony was taken by the Commission and a number of exhibits were presented, to show the construction of the rear end of the steel mail car, which satisfied the Commission, that it was hazardous for the railroad employees to get on and off such a rear end platform when answering emergent calls, or when ice and snow encumbered the platform, for the reason that the platform was but eight or ten inches in width and without handrails, instead of being

thirty inches in width and protected with handrails, as prescribed by our full crew act of 1911.

We cannot say, that as a matter of fact the conclusion reached by the Commission was not warranted by the testimony offered before it. There is nothing in this record to indicate that the manner of construction of the mail cars should be in any manner changed, nor, that it is not feasible to literally comply with the order of the Commission, by making up the train in such a manner that a car with the rear end equipment, as indicated by the act of 1911, should be the rear car of the train.

We said in B. & O. R. R. Co. v. Public Service Commission, opinion filed April 16, 1917, "The functions of this court upon appeals from orders of the Public Service Commission, have been plainly stated in Borough of Mount Union v. Mount Union Water Co. 63 Pa. Superior Ct., 337, and in West Virginia Pulp Co. v. Public Service Commission (not yet reported). We have declared in these
256 decisions that the statute exhibited no legislative intent to convert the Superior Court of Pennsylvania into a second administrative tribunal, or to place upon the shoulders of the judges of that court the duty of examining and weighing all the evidence and determining for themselves what would be a reasonable rate for the transportation of any commodity."

Like reasoning leads to the same result when applied to the facts presented on this appeal. The proper place in a train for a specially constructed car, and the character of the equipment of the rear end of the rear car, are solely matters of fact to be determined on the testimony of those familiar with the make-up and handling of trains.

The title to the Act of June 19, 1911, P. L. 1053, to wit: "To promote the safety of travellers and employees upon railroads by compelling common carriers by railroad to properly man their trains," clearly suggests the subject of platform construction and equipment for use of employees in the discharge of their duty. And section 7, of the act as clearly defines the character of that construction.

We find no error in the order made by the Commission, and it is now affirmed.

Opinion filed July 13, 1917.

257 COMMONWEALTH OF PENNSYLVANIA,
County of Dauphin, ss:

I, William Pearson, Prothonotary of the Superior Court of Pennsylvania, in and for the Harrisburg District thereof, the said Court being a Court of Record, do hereby certify that the foregoing is a true and correct Copy of the whole and entire opinion in the case of Pennsylvania Railroad Company, appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania at No. 13 of Mar. Term, 1917, as full, entire and complete as the same remains on file in the said Superior Court, in the case there stated; and I do hereby further certify that the foregoing has been compared by me

with the original record in said cause in my keeping and custody as the Prothonotary of said Court, and that the foregoing is a correct transcript from said record, and of the whole of the original thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court at Harrisburg, in the County of Dauphin, in the said Harrisburg District of Pennsylvania, this 15" day of November in the year of our Lord One Thousand Nine Hundred and seventeen.

[Seal of the Superior Court of Pennsylvania.]

WILLIAM PEARSON,
Prothonotary.

258 (Endorsement.)

March Term, 1917.

No. 13.

Pennsylvania Railroad Company, Appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania.

Certificate.

259 In the Superior Court of Pennsylvania.

The Commonwealth of Pennsylvania to the Members of the Public Service Commission of Pennsylvania, Greeting:

Whereas, on the 11" day of Aug. in the year of our Lord one thousand nine hundred and sixteen, a record was brought into the said court upon an appeal by The Pennsylvania Railroad Company from the order, determination and finding of your said Court at No. 489 of Complaint Docket, A. D. 1915, in the case wherein the said appellant is Plaintiff and your said Commission, Defendant. And was there so proceeded in, that on the 13" day of July A. D. 1917, the following decision was rendered, viz:

Order affirmed.

Per ORLADY, *P. J.*

And the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of Assembly in such cases made and provided) ordered by the said Superior Court to be remitted to the above mentioned Court in and for the County aforesaid, as well for execution or otherwise, as to justice shall appertain:

Wherefore, We here Remit you the Record of the Court aforesaid, and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness, the Hon. George B. Orlady, President Judge of our Superior Court at Harrisburg, the 10" day of August, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] WILLIAM PEARSON,
Prothonotary.

Docketed: Appeal Docket, Sep. 11, 1917. Entry No. 28. C. B. S.

260 (Endorsement.)

March Term, 1917.

No. 13.

Superior Court.

The Pennsylvania Railroad Company, Appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania.

Remittitur.

Costs.

Prothonotary S. C.:

(Pd. by Appellant)	$16.—
(Pd. by Intervenors)	1.—

Attorney's Fee:

(Not paid)	3.—
Total	$20.—

261 *Writ of Error Bond.*

Know all men by these presents, That we, The Pennsylvania Railroad Company, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto The Public Service Commission of the Commonwealth of Pennsylvania and the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, Intervenors, in the full and just sum of Five hundred ($500.00) dollars to be paid to the said The Public Service Commission of the Commonwealth of Pennsylvania and Order of Railway Conductors and Brotherhood of Railroad Trainmen, its and their certain attorney, or assigns; to which payment, well and truly to be made, we bind ourselves, and our successors, jointly and severally, by these presents. Sealed with our seals and dated this Second day of November in the year of our Lord one thousand nine hundred seventeen.

Whereas, lately at a session of the Superior Court of Pennsylvania in a suit depending in said Court, between The Public Service Commission of the Commonwealth of Pennsylvania, appellee and Order

of Railroad Conductors, and Brotherhood of Railroad Trainmen, Intervening Appellees and The Pennsylvania Railroad Company, a judgment was rendered against the said The Pennsylvania Railroad Company and the said The Pennsylvania Railroad Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Public Service Commission of the Commonwealth of Pennsylvania; Order of Railway Conductors and Brotherhood of Railroad Trainmen citing and admonishing them and each of them to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof—

Now, the condition of the above obligation is such, That if the said The Pennsylvania Railroad Company shall prosecute its writ of error to effect, and answer all costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

THE PENNSYLVANIA RAILROAD COMPANY, [SEAL.]
By F. D. McKENNEY, *Its Attorney.*

[Seal American Surety Company of New York.]

AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By BERT L. NYE, *Vice-President.*

Attest:
H. L. HAIGHT,
Resident Asst. Secretary.

Approved by—
MAHLON PITNEY,
Associate Justice Supreme Court of the United States.

Filed in Superior Court, Harrisburg District, Nov. 5, 1917.

262 [Endorsed:] Orgl. bond.

263 Supreme Court of the United States, October Term, 1917.

THE PENNSYLVANIA RAILROAD COMPANY

vs.

THE PUBLIC SERVICE COMMISSION OF PENNSYLVANIA et al.

Assignment of Error.

It was error on the part of the Superior Court of Pennsylvania not to hold and declare that the provisions of section 7 of the Act of

Assembly of Pennsylvania approved June 19, 1911, as construed and applied by The Public Service Commission of the Commonwealth of Pennsylvania was repugnant to the Commerce Clause of the Constitution of the United States and to the laws of the United States and Regulations of the Interstate Commerce Commission and of the Postmaster General of the United States made in pursuance thereof.

FRANCIS I. GOWEN,
STACY B. LLOYD,
FREDERIC D. McKENNEY,
Attorneys for Pennsylvania Railroad Company.

November 1, 1917.

263½ [Endorsed:] Filed in Superior Court, Harrisburg District, Nov. 5, 1917.

264 *Certificate.*

STATE OF PENNSYLVANIA,
County of Dauphin, ss:

In testimony that the foregoing contained on pages one to two hundred and sixty-one, inc., is a full, true and correct copy of the record and proceedings of the Superior Court of Pennsylvania, in the case lately depending therein, to No. 13, March Term, 1917, Harrisburg District, wherein The Pennsylvania Railroad Company was plaintiff below and appellant and The Public Service Commission of the Commonwealth of Pennsylvania was defendant below and appellee, I have hereunto subscribed my name and affixed the seal of the said Superior Court, at Harrisburg this fifteenth day of November, A. D. 1917.

[Seal of the Superior Court of Pennsylvania.]

WILLIAM PEARSON,
Prothonotary Superior Court,
Harrisburg District.

265 Supreme Court of the United States, O. T., 1917.

No. 783.

THE PENNSYLVANIA RAILROAD COMPANY, Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF Pennsylvania, Order of Railway Conductors and Brotherhood of Railroad Trainmen, Defendants in Error.

Specification of Points to be Relied Upon and Designation of Portions of Transcript of Record Necessary to be Considered by the Court.

Plaintiff in Error, The Pennsylvania Railroad Company, states pursuant to the provisions of paragraph 9 of rule 10 of the Rules of

Practice of the Supreme Court of the United States, that in the further prosecution of the above entitled cause he intends to rely for reversal of the judgment of the Superior Court of Pennsylvania upon the following points, viz.:

That the provisions of section 7 of the Act of Assembly of Pennsylvania approved June 19, 1911, known as the Full Crew Law of said Commonwealth, as construed and applied by said Superior Court in this cause is unconstitutional and void because opposed to the provisions of Clause 3, of Section 8, of Article I of the Constitution of the United States commonly referred to as the Com-
266 merce Clause of said Constitution, and to the laws of the United States and the Regulations of the Interstate Commerce Commission and of the Postmaster General of the United States made in pursuance thereof; and because same as so construed and applied will operate to deprive Plaintiff in Error of its property without due process of law contrary to the provisions of the Fourteenth Amendment to said Constitution.

For such purpose Plaintiff in Error deems it necessary to reproduce in print for the convenience and consideration of this Honorable Court but the following parts of the original transcript of record on file in the cause, viz.:

1. Index.
2. Writ of Error.
3. Citation with proof of service thereof.
4. Docket Entries, Public Service Commission.
5. Transcript of Record and Proceedings before Public Service Commission, except the following which should be and the Clerk of said Court is hereby requested and instructed to omit same in printing, viz.:

(*a*) Information issued by Second Assistant Postmaster General relative to the transportation of mails by railroads, Mss. pages 119 to "Sec. 1330" near bottom of page 127 and from "Section 6, Sanitary Features" etc. Mss. page 139 to and including Mss. page 163.

(*b*) Specifications of Fixtures for Mail Cars Mss. pages 173 to 177 inclusive.

6. Omit Exhibits 5, 6, 7, 8, 9, 10 and 11 photographs and photographic copies of drawings or plans showing in detail construction of sections of U. S. mail cars including end construction and
267 fixture equipment, and all endorsements. Ms. pages 178 to 191 inclusive.

7. Omit "Exhibit A" being copy of Complaint etc. before Public Service Commission of Pennsylvania and "Exhibit B" being copy of Report and Order of said Public Service Commission, Ms. pages 203 to 208 both inclusive.

8. Omit Petition of Pennsylvania Railroad Company for Supersedeas, Ms. 209 to 212 both inclusive.

9. Omit "Exhibit A" and "Exhibit B" Complaint etc. (duplication of 7 above), Ms. pages 219 to 225 both inclusive.

10. Omit Brief of Appellant (The Pennsylvania Railroad Company) in support of Rule to Show Cause etc. and Answer of Public

Service Commission to petition for Supersedeas, Ms. pages 228 to 243 both inclusive.

11. Omit Certificate of Transfer and Endorsements, Ms. pages 244 and 245.

12. Omit Certificate of Prothonotary, William Pearson to opinion of Superior Court of Pennsylvania and enrorsement Ms. pages 257 to 258.

13. All of transcript of record not hereinbefore specified as and for omission in printing, to be included in printed transcript for use of the Court.

FRANCIS I. GOWEN,
FREDERIC D. McKENNEY,
STACY B. LLOYD,
Attorneys for Plaintiff in Error.

268 Copy of aforegoing specification of points and designation of parts of record to be omitted in printing acknowledged this — day of December A. D. 1917.

____ ____,
Attorney for Public Service Commission of Commonwealth of Pennsylvania.

____ ____,
Attorney for Order of Railway Conductors and Brotherhood of Railroad Trainmen.

[Endorsed:] 783/26250.

269

Law Offices

Bell, Trinkle and Deeter,

1330 Land Title Building.

Philadelphia, 10 December, 1917.

John C. Bell, William N. Trinkle, Paxson Deeter, John C. Bell, Jr., John Thiel, Benjamin M. Golder.

Pennsylvania Railroad vs. Public Service Commission of Pa., et al., No. 783, O. T. 1917, Supreme Court of United States.

Frederic D. McKenney, Esq., Hibbs Building, Washington, D. C.

DEAR SIR: Along with your letter of the 7th instant in the above I duly received copy of paper entitled "specification of points to be relied upon and designation of portions of transcript of record necessary to be considered by the Court" upon the writ of error in the above case.

James Scarlet Esq. originally represented the trainmen before the Public Service Commission of Pennsylvania but by reason of other duties and engagement felt con-trained to retire from the case prior

to the argument thereof in the Appellate Courts of the State. He is not now of counsel for defendants in error in the matter.

Yours very truly,

WILLIAM N. TRINKLE,
Per M. R. NOWLAND,
Secretary.

Mr. Trinkle personally dictated the above letter, but was obliged to leave the office before it was ready for his signature.

[Endorsed:] 783/26250.

270 [Endorsed:] File No. 26250. Supreme Court U. S., October term, 1917. Term No. 783. The Pennsylvania R. R. Co., Pl'ff in Error, vs. The Public Service Commission of Pennsylvania. Statement of points to be relied upon and designation by plaintiff in error of parts of record to be printed. Filed December 12, 1917.

271 In the Supreme Court of the United States, O. T., 1917.

No. 783.

THE PENNSYLVANIA RAILROAD COMPANY, Plaintiff in Error,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF Pennsylvania, Order of Railway Conductors and Brotherhood of Railroad Trainmen, Defendants in Error.

Designation by Defendants in Error of Additional Parts of the Record Material for the Consideration of the Court.

The defendants in error, the Public Service Commission of the Commonwealth of Pennsylvania, Order of Railway Conductors and Brotherhood of Railroad Trainmen, pursuant to the provisions of paragraph 9, of Rule 10 of the Rules of Practice of the Supreme Court of the United States, hereby designate, in addition to the parts of record designated to be printed by the plaintiff in error, said defendants in error deem material to be printed for the convenience and consideration of the Court in the above entitled cause, the following parts of the original transcript of record on file therein, viz:

The full and entire original transcript of record on file in the cause, including all and every the parts thereof designated or specified as and for omission in printing by the plaintiff in error in the specification filed by it in said cause, and the petition filed in the Supreme Court of Pennsylvania by the Pennsylvania Rail-
272 road Company, plaintiff in error, for an allowance of an appeal to said Supreme Court of Pennsylvania from the judgment of the Superior Court of Pennsylvania, and the Answer to said Petition, filed in the Supreme Court of Pennsylvania by the Order of

Railway Conductors and Brotherhood of Railroad Trainmen, defendants in error, and the action of the Supreme Court of Pennsylvania, dismissing the said petition of the Pennsylvania Railroad Company, plaintiff in error, provided, however, that no document or copy of any document appearing in said original transcript of record on file need be printed more than once in the reproduction of said record in printing.

G. F. SNYDER,
Attorney for Public Service Commission of the Commonwealth of Pennsylvania, Defendant in Error.

W. N. TRINKLE,
Attorney for Order of Railway Conductors and Brotherhood of Railroad Trainmen, Defendants in Error.

273 [Endorsed:] In the Supreme Court of United States, O. T. 1917. No. 783. 783/26250. The Pennsylvania Railroad Company, Plaintiff in Error, vs. The Public Service Commission of The Commonwealth of Pennsylvania Order of Railway Conductors and Brotherhood of Railroad Trainmen, Defendants in Error. Designation by defendants in error of additional parts of the record material for the consideration of the court. Berne H. Evans, William N. Trinkle, Attys. for Defendants in Error.

274 [Endorsed:] File No. 26250. Supreme Court U. S., October term, 1917. Term No. 783. The Pennsylvania R. R. Co., Pl'ff in Error, vs. The Public Service Commission of Pennsylvania. Designation by defendants in error of additional parts of record to be printed. Filed January 7, 1918.

275 [Endorsed:] The Pennsylvania Railroad Company, Appellant, vs. The Public Service Commission of the Commonwealth of Pennsylvania. Transcript of record.

Endorsed on cover: File No. 26250. Pennsylvania Superior Court. Term No. 783. The Pennsylvania Railroad Company, plaintiff in error, vs. The Public Service Commission of the Commonwealth of Pennsylvania. Filed December 7th, 1917. File No. 26250.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 311.

THE PENNSYLVANIA RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of Case.

Section 7 of the Act of the Commonwealth of Pennsylvania, entitled "An Act to Promote the Safety of Travellers and Employees upon Railroads by compelling common carriers by railroad to properly man their trains," approved June 19, 1911 (Public Laws Pennsylvania, 1911, page 1053), is as follows:

"Section 7. It shall be unlawful for any railroad company, its officers or agents, officers of the court, receiver, or any person or persons doing business in this Commonwealth, to run or operate over its road, or part of its road, or permit to be run or operated over its road or any part of its road, any train consisting of United States mail, or express, cars, without the rear end of the rear car so equipped, with exit free from obstruction, platform of thirty inches in width, guard rails and steps, also heating appliances to maintain a temperature of sixty-five degrees."*

*This section is quoted incorrectly at pages 13, 15, 200 and possibly elsewhere in the transcript of record, in that the phrase "without the rear end of the rear car so equipped" is made to read "without the rear end of the car so equipped."

Complaint was made by the Order of Railway Conductors and others before the Public Service Commission of Pennsylvania that the defendant Railroad Company was operating a certain train, known as No. 1019, between Altoona and Pittsburgh, in said State, with United States mail car No. 8627 on the rear thereof, said mail car not having its rear end equipped as required by said section 7 of said Act of 1911 above quoted.

The company answered admitting the allegations of fact, but denied that said Section above quoted was applicable to the train movement in question, and averred that on the occasion in question "it ran and operated the said train No. 1019 in compliance with the law applicable thereto" (R., 7).

On the hearing before the Commission it was proved and not controverted that said train No. 1019 "was provided for carriage of the mails exclusively" (R., 17); that said train ran from New York to Pittsburgh; that the car in question, No. 8627, was loaded with mail from New York to Pittsburgh en route to St. Louis, and that there was not any car

on that train provided with a 30-inch platform (R., 18); that under the laws of the United States the Postmaster General was required "in all cases" to "determine upon what trains and in what manner mail shall be conveyed" and to prescribe the style and character of the cars to be used for the railway mail service (Act March 3, 1879, 20 Stats. 358); that the cars composing said train were constructed in strict accord with detailed plans and specifications prescribed by the Postmaster General, particularly in that they fully complied as to rear-end construction and equipment with sections 28 and 32 of the Post Office Department's specifications for the construction of steel full postal cars, approved March 28, 1912, as revised March 17, 1915, which require:

> "Section 28—Vestibules.
> "Postal cars are to be equipped with the railway company's standard short vestibule" * * *.
> "Section 32—Steps, Handholds, etc.
> "The details of the steps, handholds, and signal brackets to be in accordance with the United States safety appliance and M. C. B. requirements and the practice of the railroad for which the cars are built. Side steps to be full width of door opening where possible. Handholds to be applied to each side door post. See R. M. S. drawings for detail step construction."
> (R., 83, 138, 139.)

It was further proved and not denied that the rear car in question, No. 8627, in all respects as to rear end construction and equipment not only complied with the specifications of the Postmaster General for construction and equipment of steel full postal cars, but also in all respects complied with the requirements of the Act of Congress of April 14, 1910 (36 Stats., 298), commonly called the Safety Appliance Law (R., 18), and the order of March 13, 1911, of the Interstate Commerce Commission, prescribing in detail the "United States Safety Appliance Standards" (R., 19, 25, 26, 27, 28).

At the conclusion of all the evidence given before the Public Service Commission it was urged on behalf of the Railroad Company that the Congress had "fully covered this matter, and, under the decisions of the Supreme Court, * * * the State act is absolutely null and void" (R., 31).

> Commissioner Pennypacker (replying):
> "It is a very important one (subject), I think, as to what would be the duty of the Commission, provided there was a conflict between the act of Congress, or the decision of the Supreme Court, and the act of the Assembly, which creates this Commission" * * *
> "The Supreme Court of the United States, for this purpose, is a foreign jurisdiction, and here we have legislation of our own Commonwealth which says otherwise. Now, what is the Commission to do?"
> Mr. Lloyd (attorney for Railroad Company): "We are subject to the laws of the United States under the Constitution."
> Commissioner Pennypacker: "To some extent, we are."
> (R., 31, 32.)

Upon consideration, after argument, the Commission summed up its appreciation of the issues involved and its conclusion with repect thereto as follows (R., 8, 9):

> "At the hearing and upon argument the respondent maintained that the Congress of the United States had legislated upon this subject and that the rear car upon respondent's train, a United States mail car, was constructed in accordance with the specifications and requirements of the Post Office Department of the United States and that these specifications and requirements being in conflict with section 7 of the Act of 1911, the section was void.
> "The Pennsylvania act referred to relates to the running, operating and manning of trains, and not to the construction of United States mail cars, and is therefore in that respect not in conflict with any regulation of the postal service prescribed in pursuance of authority granted by Congress.

"There is nothing in these postal regulations requiring the rear end of a train to be a United States mail car; there is positive direction in the Pennsylvania statute prescribing certain provisions to be made on the rear car of any train in order that the safety of those concerned may be assured.

"This can, and it was contemplated by the Full Crew Law that it should be accomplished, not by changing the form of construction of mail cars, but by selecting a particular type car for rear end train service. This the respondent has not done, it therefore has violated the provisions of section 7 of the Act of June 19, 1911.

"Has the Federal Government by legislation assumed jurisdiction and control of the subject-matter to the exclusion of the States? We are not pursuaded that it has, but here again we must differentiate between the administrative duty and responsibility of The Public Service Commission and the authority of the courts. It is not for us to set aside the plain statutory provision of our own State. If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government not clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof we must accept and follow administratively the terms and provisions of the act we are charged with the duty of enforcing.

"An order will be issued requiring the respondent to operate its train No. 1019 over its road with the rear end of the rear car thereof equipped with exit free from obstruction; with platform of thirty inches in width and with guard rails and steps."

To review the formal order of the Commission entered in accord with the foregoing conclusion (R., 9, 10) the Railroad Company, as authorized by applicable State law, perfected its appeal to the Superior Court of Pennsylvania (R., 162), and upon the appeal the Order of Railway Conductors and Brotherhood of Railroad Trainmen were "granted leave to intervene as parties defendant or appellees" (R., 198).

After argument the Superior Court of Pennsylvania affirmed the order of the Commission (R., 163, 201), saying in its opinion (R., 200):

> "While the argument in this case covered many interesting questions, our decision is limited to the exact and undisputed facts presented by the record. The order appealed from is as follows: 'The Pennsylvania Railroad Company is hereby ordered to operate its train No. 1019, over its road within the State of Pennsylvania, with the rear end of the rear car thereof equipped and free from obstructions with platform of 30 inches in width, and with guardrails and steps.'
>
> "The description of the equipment for the rear end of the rear car is intended to comply with that required by the Act of June 19, 1911, above quoted, and is as definitely intended to prohibit the rear end equipment which is admitted to be that of the specified full steel United States mail cars that the railroad company was required to furnish under Federal regulations. These mail cars are constructed in strict conformity with the specifications issued by the Postmaster General, and there is no challenge to the Federal authority to make such regulations and to insist on such performance. That question is not in dispute.
>
> "We are not concerned with the wisdom, policy or expediency of this act of the Legislature. Nor can we consider in this case, whether the provisions and requirements of the act are unreasonable and arbitrary and within the power of the Legislature of this Commonwealth to enact. That proposition was fully considered in Penna. R. R. Co. *vs.* Ewing, 241 Pa., 581, and was therein, so far as this Court is concerned, conclusively decided by holding that the act in question was a valid exercise of the police power of the Commonwealth, as such violates no provision of either the Constitution of Pennsylvania or the Constitution of the United States.
>
> "The right of Congress, through the Post Office Department, to define the kind of a car to be furnished by the Railroad Company for transmission

of mails, is not challenged by the appellant, and there is nothing in the order made by the Public Service Commission defining the place in the train which the mail car is to take. That is a matter to be decided by the Railroad Company in the discharge of its carrier's duty. The thing provided by the statute is, that a mail car constructed in accordance with the regulations of the Post Office Department shall not be the last car in the train, unless it has the rear end equipment prescribed by our Act of June 19, 1911. Considerable testimony was taken by the Commission and a number of exhibits were presented, to show the construction of the rear end of the steel mail car, which satisfied the Commission, that it was hazardous for the railroad employees to get on and off such a rear end platform when answering emergent calls, or when ice and snow encumbered the platform, for the reason that the platform was but eight or ten inches in width and without hand rails, instead of being thirty inches in width and protected with hand rails, as prescribed by our Full Crew Act of 1911.

"We cannot say, that as a matter of fact the conclusion reached by the Commission was not warranted by the testimony offered before it. There is nothing in this record to indicate that the manner of construction of the mail cars should be in any manner changed, nor, that it is not feasible to literally comply with the order of the Commission, by making up the train in such a manner that a car with the rear end equipment, as indicated by the act of 1911, should be the rear car of the train."

From this affirmance of the order of the Commission the Railroad Company petitioned for leave to appeal to the Supreme Court of the State of Pennsylvania, but such leave was denied August 6, 1917 (R., 163).

To review the judgment of the Superior Court of Pennsylvania, it being "the highest court of (a) the State in which a decision in the suit could be had," application for allowance for a writ of error from this Court was duly made

and granted on the 2nd day of November, 1917, and the same having been in all respects perfected in accordance with law (Act Sept. 6, 1916; 39 Stats., 726) the case is now here for consideration.

ASSIGNMENT OF ERRORS.

It was error on the part of the Superior Court of Pennsylvania not to hold and declare that the provisions of section 7 of the Act of Assembly of Pennsylvania approved June 19, 1911, as construed and applied by the Public Service Commission of the Commonwealth of Pennsylvania were repugnant to the Commerce Clause of the Constitution of the United States and to the laws of the United States and the Regulations of the Interstate Commerce Commission and of the Postmaster General of the United States made in pursuance thereof.

SHORT POINT.

In the argument of this cause, attorneys for the plaintiff in error will rely for reversal of the judgment of the Superior Court of Pennsylvania upon the proposition that the provisions of Section 7 of the Act of Assembly of Pennsylvania approved June 19, 1911, known as the Full Crew Law of said Commonwealth, as construed and applied by said Superior Court in this cause is unconstitutional and void because opposed to the provisions of Clause 3 of Section 8 of Article I of the Constitution of the United States, commonly referred to as the Commerce Clause of said Constitution, and to the laws of the United States and the Regulations of the Interstate Commerce Commission and the Regulations of the Postmaster General of the United States made in pursuance thereof, and because same as so construed and applied will operate to deprive plaintiff in error of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to said Constitution.

ARGUMENT.

Pennsylvania Railroad Company's train No. 1019, being the train affected by the order of the Public Service Commission of Pennsylvania here complained of, is operated exclusively for the carriage of the United States mails (R., 17) and moves daily from New York City, New York, via Philadelphia and Altoona, to Pittsburgh, Pennsylvania, one or more cars thereof *en route* to St. Louis, Missouri (R., 18).

In make up it consists of two steel express cars and six steel United States mail cars, each one of the entire eight cars conforming in construction and equipment, including vestibule or platform construction, sill steps, side and end handholds, with the requirements of the Federal Safety Appliance laws (Act April 14, 1910; 36 Stats., 298) and the detailed requirements of the Order of the Interstate Commerce Commission of March 13, 1911, made in pursuance thereof. Each of said cars likewise conforms strictly in all respects with the specifications issued by the Postmaster General of the United States under authority of the Act of Congress of March 3, 1879 (20 Stats., 358), for the construction of the standard full-steel mail cars which the plaintiff in error, under the compulsion of the same and cognate acts of Congress and regulations of the Post Office Department founded thereon, was and is required to furnish for the transportation of the mails.

No one of the cars in the train was equipped with end platforms which conform to the requirements of Section 7 of the so-called Full Crew Law (Act of June 19, 1911; Public Laws 1911, p. 1053) of Pennsylvania.

The report of the Public Service Commission and the opinion of the Superior Court of the State affirming same concede such to be the facts, but, while challenging neither the Federal authority to make any or all such regulations

and to insist upon their performance nor the authority of the Congress, through the Post Office Department, to prescribe the kind of cars to be furnished by the Railroad Company for the transmission of the mails (R., 200), nevertheless hold the provisions of the State law to be applicable and controlling to the extent of prohibiting the use of any car so constructed and furnished as the rear or last car of the train.

As stated by the Superior Court:

> "The description (contained in the order of the Commission) of the equipment for the rear end of the rear car is intended to comply with that required by the Act of June 19, 1911, * * * *and is as definitely intended to prohibit the rear end equipment which is admitted to be that of the specified full steel mail cars that the railroad company was required to furnish under Federal Regulations*" (R., 200; italics ours).

The proposition of both the Commission and the Superior Court is that as the State statute does not wholly prohibit the use of mail cars equipped and furnished in accord with *Federal* laws and regulations, but only prohibits the use of any such car *as the last or rear car* in a train, there is no such conflict between the *Federal* and *State* law as requires the latter to be disregarded.

In justification of the conclusion so reached and expressed it is said that the Commission was satisfied from the testimony and exhibits before it "that it was hazardous for railroad employees to get on and off such a rear-end platform when answering emergent calls, or when ice and snow encumbered the platform, for the reason that the platform was but eight or ten inches in width and without handrails instead of being thirty inches in width and protected with handrails, as prescribed by our (Pennsylvania) Full Crew Act of 1911" (R., 200, 201).

It will be noted that the Interstate Commerce Commission, by its order of March 13, 1911, issued in pursuance of the authority conferred upon it by the Act of April 14, 1910, supplementing "An Act to promote the safety of employees * * * upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers," etc., etc., had given approval to the use "of cars with platform end sills six (6) or more inches in width" (R., 30, 51), while the width of the end sills or platforms of the cars here involved was "ten inches in the clear" (R., 29), being the adopted width dimension of the Pennsylvania Railroads' "standard short vestibule" called for by Section 28 of the "Specification for the Construction of Steel Full Postal Cars" (R., 124, 138, 29).

The question for decision, and the only one of importance involved in the merits, would seem to be whether the Congress itself or the Interstate Commerce Commission, by any regulation made under authority conferred upon it by law, has so exercised its paramount authority over the character, dimensions, and safety-appliance equipment of cars to be used in interstate commerce as to preclude the application to trains moving in such commerce of provisions of local laws which either expressly or in effect require the use, whether on the rear end or elsewhere in such trains, of a car differently or additionally equipped.

That the car here in question was equipped with the safety appliances required by the Federal Safety Appliance Acts is not controverted.

It is "a standard built mail car" (R., 28) "constructed," as found by the Superior Court, "in strict conformity with the specifications issued by the Postmaster General, and there is no challenge to the Federal authority to make such regulations and to insist on such performance" (R., 200).

The specifications issued by the Postmaster General re-

quire (Section 32; R., 28, 139): "The details of the steps, handholds, and signal brackets to be in accordance with United States safety-appliance and M. C. B. (Master Car Builders') requirements and the practice of the railroad for which the cars are built," and compel all "Postal cars * * * to be equipped with the railway company's standard short vestibule, preferably with outside buffer springs, and with diaphragms when needed for communication between cars" (Section 28; R., 28).

As all postal cars must be equipped "with the Railway Company's standard short vestibule," and as the "platform" is nothing but the floor of the vestibule, it is certain that if the vestibule is "short" the platform or floor thereof must likewise be "short."

In the instant case the company's "standard short vestibule" called for a platform end sill "ten inches in the clear" (R., 29), while the "United States Safety Appliance Standards," Interstate Commerce Commission's Order March 13, 1911, permitted "platform end sills six (6) inches in width" (R., 30).

Under the Post Office Department's "Specification for the Construction of Steel Full Postal Cars" "all standard-built mail cars are equipped for use as a last car of a train" (R., 26).

By the Act of March 3, 1870 (20 Stats., 358), "all cars or parts of cars used for the railway mail service" are required to be "of such style, length, and character, and furnished in such manner as shall be required by the Postmaster General, and shall be constructed, fitted up, and maintained, heated, and lighted by and at the expense of the railroad companies."

That the Act of 1870 and the specification of the Postmaster General issued pursuant to its terms, and also the Federal Safety Appliance Acts and the regulations of the Interstate Commerce Commission respecting matters of detail pursuant thereto, are constitutional and valid laws of the

United States cannot reasonably be, and seemingly is not, disputed. Admitting them to be constitutional and valid, it is said, however, that they do not control in the circumstances, because while they prescribe in detail the character, dimensions, and safety-appliance equipment of the only cars which are permissible for use in the transportation of the mails, whether local or interstate, they do not prescribe their place or order in the make up of the train or when the train is moving into or through the State of Pennsylvania, and, therefore, while the Federal authority undoubtedly has occupied and entirely filled the field of construction, it has not entered upon or sought to control the field of operation, of transportation itself; hence that field, at least to the extent indicated by the Pennsylvania Act of June 19, 1911, Section 7, is open to cultivation and occupation by the State.

But these standard-built mail cars are constructed solely and only for the purpose of being operated—that is, moved over the carrier's rails—in the transportation of the mails. Unless operated or so moved they would serve no useful end. It would seem, therefore, that the Federal prescriptions as to character of their construction and their equipment with safety appliances, including the dimensions of their rear platforms, number, and locations of guard rails and positions of brackets for supporting marker lights, in the absence of restrictive provisions, are as applicable to rear end cars as they are to the front or intermediate cars of the train.

Section 2 of the Federal Safety Appliance Acts, as amended April 14, 1910, ch. 1601 (36 Stats. 298; for a convenient chronological exposition of the Federal Safety Appliance Acts see U. S. Compiled Statutes, 1918, Compact Edition, Sec. 8605, p. 1378 et seq.), declared it to be "unlawful for any common carrier subject to the provisions of this act," *i. e.*, "engaged in interstate commerce by railroad," "to haul or permit to be hauled or used on its line any car * * * not equipped with appliances provided for in this

act, to wit, all cars must be equipped with secure sill steps" * * * while Section 4 of the Act of March 2, 1893 (27 Stats., 531), which act the next above supplemented by way of amendment, likewise made it unlawful for any such carrier to use in interstate commerce any car "not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars."

Section 3 of the Act of April 14, 1910, *ubi supra*, makes it the duty of and requires the Interstate Commerce Commission "after hearing" to "designate the number, dimensions, locations, and the manner of application of the appliances provided for by Section 2 of this (the Act of April 14, 1910) and Section 4 of the Act of March 2, 1893" (*ubi supra*), and to "give notice of such designation to all common carriers subject to" the act, and specifically declares that *"thereafter said number, location, dimensions, and manner of application as designated by said Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this act"* * * * (italics supplied).

The Commission's order of March 13, 1911, "In the matter of designating the number, dimensions, location, and manner of application of certain safety appliances," made after hearings duly held, was the outcome of this requirement of the statute.

As before stated, it is found by the Superior Court that "these mail cars are constructed in strict conformity with all such requirements."

Section 4 of said Act of April 14, 1910 (*ubi supra*), declares that any carrier subject to the act "using, hauling, or permitting to be used or hauled on its line, any car subject to the requirements of the Act, not equipped as provided in this act shall be liable to a penalty of one hundred dollars for each and every such violation," and by Section 6 thereof

it is specifically made the duty of the Interstate Commerce Commission "to enforce the provisions of this act."

Conceding, inferentially at least, the paramount and controlling effect of all of the above in the field to which they apply, it is said by way of avoidance, both by the Public Service Commission, defendant in error here, and by the Superior Court, whose judgment affirming the order of the Commission in the premises is under review, that—

> "The Pennsylvania act referred to (viz., Section 7 of the Act of 1911) relates to the running, operating and manning of trains, and not to the construction of United States Mail cars, and is therefore in that respect not in conflict with any regulation (of the postal service) prescribed in pursuance of authority granted by Congress." (Brackets inserted by us.)

Also that as there is nothing in these regulations "requiring the rear end of a train to be a United States mail car," while the Pennsylvania statute prescribes "certain provisions to be made on the rear car of any (every) train in order that the safety of those concerned may be assured" (R., 8, 9), the failure of railroad company to select a particular type car for rear end train service," though such type be neither required nor contemplated by any Federal statute or regulation made in pursuance thereof, constitutes a violation of Section 7 of the (State) Act of June 19, 1911."

The Superior Court, freely conceding "the right of the Congress, through the Post Office Department, to define the kind of car to be furnished by the railroad company for transmission of mails," declares that the State statute does not prohibit the use of cars so defined and furnished otherwise than as the last or rear car in the train, in which position, as it agrees with and affirms the conclusion of the Commission, cars, though so defined and furnished, cannot be used, even in interstate movements, unless the rear end equipment thereof accords with that prescribed by the Pennsylvania Act of June 19, 1911 (R., 200).

Logically considered, the conclusion so expressed inevitably does and, unless overruled, will continue to impose a substantial (not merely incidental) burden upon interstate commerce, for it cannot be gainsaid that it seriously impairs the freedom of use of cars which in all respects comply with the definitions and requirements of the Federal statutes and regulations, unless they also conform to the definitions and requirements of the State law, when desired for use as the last car in the train.

As under the Federal laws and regulations cars conforming in details of construction and safety appliance equipment are free to move in interstate commerce wherever placed in a train, the denial of such freedom of movement and use by the application of State laws and regulations constitutes, as matter of law, the denial of a Federal right, privilege, and immunity specially claimed before the State commission and courts, and constitutes an interference by the States with, and a burden upon, commerce which the Federal power will not contemplate with indifference.

As said by Mr. Justice Story, delivering the opinion of this Court in Prigg *vs.* Pennsylvania, 16 Peters, 536, at page 617:

> "If Congress have a Constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the State legislatures have a right to interfere, and as it were, by way of complement to the Legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. This doctrine was fully recognized by this court in the case of Houston *vs.* Moore, 5 Wheat., 1, 21, 22, where it was expressly held that where Congress have

exercised a power over a particular subject given them by the Constitution, it is not competent for State legislation to add to the provisions of Congress upon that subject; for that the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed."

In Erie Railroad Company vs. New York, 233 U. S., 671, where the provisions of the New York Labor Law concerning hours of service of telegraph operators in railroad signal towers came in conflict with applicable provisions of the Federal Hours of Service laws, it was said (McKenna, A. J.), at pages 681, 682:

"The relative supremacy of the State and National power over interstate commerce need not be commented upon. Where there is conflict the State legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its Constitutional authority, the regulating power of the State ceases to exist. *Adams Express Co. vs. Croninger*, 226 U. S., 491, and cases cited. Also *Chicago, R. I. & Pac. Ry. Co. vs. Hardwick Elevator Co.*, 226 U. S., 426; *Chicago, Ind. & L. Ry. Co. vs. Hackett*, 228 U. S., 559; *McDermott vs. Wisconsin*, 228 U. S., 115; *Minnesota Rate Cases*, 230 U. S., 352; *Taylor vs. Taylor*, 232 U. S., 363.

"This is the general principle. It was given application to an instance like that in the case at bar in *Northern Pacific Ry. vs. Washington*, 222 U. S., 370. The case arose upon an asserted conflict between the Hours of Service Law of March 4, 1907, the one involved here, and the law of the State of Washington which also regulated the hours of railway employees. The latter became effective June 12, 1907, that is, before the time the Federal Hours of Service Law was in force but after its enactment. The State act resembled the Federal act, and prohibited the consecutive hours of service which had taken place on the Northern Pacific Railroad and on account of which the action was brought by the Attorney Gen-

> eral of the State against the Company for the penalties prescribed for violation of the act. The railroad company admitted the facts but denied liability under the act, asserting that its train was an interstate train and was not subject to the control of the State because within the exclusive control of Congress on the subject."

The Supreme Court of the State "held that the act of Congress did not apply because of its provision that it should not take effect until one year after its passage."

This Court reversed the judgment of the State Supreme Court on the ground that the view expressed was not "compatible with the paramount power of Congress over interstate commerce," it being considered "elementary" that the police power of the State could only exist from the silence of Congress upon the subject, and ceased when Congress acted or manifested its purpose to call into play its exclusive power" (p. 682).

Responding to the suggestion of counsel, founded upon the opinion and decision of the State court, to the effect that the State law and the Federal law could stand together because the State had "simply supplemented the action of the Federal authorities" by raising "the limit of safety," this Court said (p. 683):

> "We realize the strength of these observations but they put out of view, we think, the ground of decision of the cases, and, indeed, the necessary condition of the supremacy of the congressional power. It is not that there may be division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it.
>
> "Regulation is not intended to be a mere wanton exercise of power. It is a restriction upon the management of the railroads. It is induced by the public interest or safety, and the 'Hours of Service' law of March 4, 1907, is the judgment of Congress of the extent of the restriction necessary. It admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety and of the cost and burden which the railroad must endure to secure it."

In Southern Railway Company *vs.* R. R. Commission of Indiana, 236 United States, 439, where, as in the case at bar, it was sought to apply the provisions of the State statute prescribing safety appliances to a car moving in interstate commerce, it is said (per Lamar, A. J.), at pages 446, 447, 448:

> "Until Congress entered the field the States could legislate as to equipment in such manner as to incidentally affect without burdening interstate commerce. But Congress could pass the Safety Appliance Act only because of the fact that the equipment of cars moving on interstate roads was a regulation of interstate commerce. Under the Constitution the nature of that power is such that when exercised it is exclusive, and *ipso facto*, supersedes existing State legislation on the same subject. Congress of course could have 'circumscribed its regulations' so as to occupy a limited field. Savage *vs.* Jones, 225 U. S., 501, 533. Atlantic Line *vs.* Georgia, 234 U. S., 280, 293. But so far as it did legislate, the exclusive effect of the Safety Appliance Act did not relate merely to details of the statute and the penalties it imposed, but extended to the whole subject of equipping cars with appliances intended for the protection of employees. The States thereafter could not legislate so as to require greater or less or different equipment; nor could they punish by imposing greater or less or different penalties. * * *
>
> "Without therefore discussing the many cases sustaining the right of the States to legislate on subjects which, while not burdening, may yet incidentally affect interstate commerce, it is sufficient here to say that Congress has so far occupied the field of legislation relating to the equipment of freight cars with safety appliances as to supersede existing and prevent further legislation on that subject. The principle is too well established to require argument. Its application may be seen in rulings in the closely analogous cases relating to State penalties for failing to furnish cars and to State penalties for retaining

> employees at work on cars beyond the time allowed by the Hours-of-Service Law. * * *
>
> "The test, however, is not whether the State legislation is in conflict with the details of the Federal law or supplements it, but whether the State has any jurisdiction of a subject which Congress had exerted its exclusive control. The Safety Appliance Act having superseded the Indiana statute the judgment imposing the penalty must be reversed." * * *

In Charleston & Western Carolina Railway Co. *vs.* Varnville Furniture Company, 237 U. S., 597, it is said, page 604 (per Holmes, A. J.):

> "When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go. Chicago, Rock Island & Pacific Ry. *vs.* Hardwick Elevator Co., 226 U. S., 426, 435; Southern Railway *vs.* Indiana Railroad Commission, 236 U. S., 439, 446, 447." * * *

To like effect are the conclusions expressed in Texas & Pacific Ry. Co. *vs.* Rigsby, 241 U. S., 33, 41; Illinois Central R. Co. *vs.* Williams, 242 U. S., 462, and New York Central R. Co. *vs.* Winfield, 244 U. S., 147, in the last of which it is said (p. 148):

> "It is settled that under the commerce clause of the Constitution Congress may regulate the obligation of common carriers and the rights of their employees arising out of injuries sustained by the latter where both are engaged in interstate commerce; and it also is settled that when Congress acts upon the subject all State laws covering the same field are necessarily superseded by reason of the supremacy of the national authority."

Citing numerous cases.

Whether the State and Federal laws cover the same field is to be determined by considerations of substance, and the

results of their application in practice, and not by mere differences in entitlement or phraseology.

It is not helpful to say that the State statute relates to "the running, operating and manning of trains" while the Federal statutes and regulations relate "to the construction of United States mail cars."

It is expressly stated by the Superior Court that the description of the equipment for the rear end of the rear car contained in the order of the Commission complained of "is intended to comply with that required by the Act of June 19, 1911" (State law), and is "definitely intended to prohibit the rear-end equipment, which is admitted to be that of the specified full steel United States mail cars that the railroad company was required to furnish under Federal regulations" (R., 200).

When the Congress, in the exercise of its paramount authority, has defined and prescribed a particular type of car, furnished with particularly described equipment, for use in the transportation of the mails, or, indeed, for use in interstate commerce generally, without limitation as to the place or position in trains which such cars shall occupy, what solid authority is there for the assumption or decision that the States, in whatever guise the thing may be attempted to be done, may prohibit the use in any part of the train of any such car?

In the light of the precedents established by this Court and above quoted, any such assumption must ultimately fail.

For the reasons given, and upon the authority of the cases cited and quoted from, it is respectfully submitted that the judgment of the Superior Court of Pennsylvania should be reversed and the cause remanded to that Court with instructions to reverse the order of the Public Service Commission of Pennsylvania and to direct the dismissal of the complaint.

RULE 10 OF THE RULES OF PRACTICE.

In order to obviate unnecessary labor on part of members of this Court, as well as to keep down the expenses of litigants incident to appeals and the like, this Court, by its rules of practice (Rule 10, par. 9), has provided for the omission in printing of parts of the transcript deemed not necessary to be considered in connection with the points relied upon for reversal, and has provided that—

> "If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed," * * * and—
>
> "If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the Court shall think proper."

To advantage itself by the entirely reasonable provisions of this rule, plaintiff in error, within five (5) days after filing its transcript of record in this Court, filed its designation of parts to be omitted in printing, with proof of service of a copy of such designation upon opponents (R., 205-208).

The parts so designated constitute in excess of seventy (70) printed pages of the printed transcript now before the Court, besides the reproductions of photographs and endorsements thereon, which appear at pages 149 *et seq.* of the printed record, and various separate sheets, being reproductions of detail working drawings, which are too cumbersome to be bound in with the book.

Notwithstanding the matter so designated for omission could not by even the widest stretch of imagination be deemed relevant in any aspect of the point relied upon for reversal by plaintiff in error, nevertheless counsel for defendant in error, apparently after deliberation, on January 7, 1918, directed "the full and entire original transcript of

record on file in the cause, including all and every the parts thereof designated or specified as and for omission in printing by the plaintiff in error," to be printed.

As it is believed that such direction cannot reasonably be justified in the circumstances of this case, we respectfully invoke the rule, to the end that "such order as to costs may be made as the court shall think proper."

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In the Supreme Court of the United States.

OCTOBER TERM, 1918. No. 311.
(October Term, 1919. No. 53.)

Pennsylvania Railroad Company, Plaintiff in Error,

vs.

Public Service Commission of the Commonwealth of Pennsylvania, Order of Railway Conductors and Brotherhood of Railroad Trainmen, Defendants in Error.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF CASE.

The case concerned the enforcement of Section 7 of the Pennsylvania Full Crew Act of June 19th, 1911 (P. L. Pa. 1911, page 1053).

Section 7 of the Act of the Commonwealth of Pennsylvania, entitled "An Act to promote the safety of travelers and employees upon railroads by compelling common car-

riers by railroads to properly man their trains," approved June 19th, 1911 (P. L. Pa. 1911, page 1053), popularly known as the Full Crew Act, provides as follows:—

> "SECTION 7. That it shall be unlawful for any Railroad Company, its officers or agents, officers of the court, receiver or any person or persons doing business in this Commonwealth to run or operate over its road, or part of its road, or permit to be run or operated over its road, or any part of its road any train consisting of United States mail or express cars without the rear end of the rear car so equipped with exit free from obstruction, *platform of thirty inches in width*, guard rails and steps; also heating appliances to maintain a temperature of sixty five degrees."

Section 9 of the said Act provided:—

> "SECTION 9. It shall be the duty of the State Railroad Commission of the Commonwealth to enforce the provisions of this Act."

When afterwards, by the Act of July 26th, 1913 (P. L. of Pennsylvania 1913, page 1374), the "State Railroad Commission of the Commonwealth of Pennsylvania" was abolished, and the Public Service Commission of the Commonwealth of Pennsylvania, defendant in error, was created in place thereof, the specific provisions of the said Full Crew Act of 1911, including Section 7 thereof, were expressly saved from repeal, and the Public Service Commission was charged with this same ministerial duty of enforcing the provisions of the said Full Crew Act.

Thus, Section 53 of the Act of July 26th, 1913 (P. L. 1374-1435), (known as the Public Service Company Law) provided that " the act entitled 'an act to promote the safety of travelers and employees upon railroads by compelling common carriers by railroad to properly man their trains' approved 19 June A. D. 1911, *shall remain in full force and*

(Italics ours.)

effect" and then went on to provide, by way of amendment, that "except that section 9 thereof, which reads as follows:

> " 'SECTION 9. It shall be the duty of the State Railroad Commission of the Commonwealth to enforce the provisions of this Act'

shall be, and is hereby, amended so as to read as follows:

> " 'SECTION 9. It shall be the duty of the Public Service Commission of the Commonwealth of Pennsylvania to enforce the provisions of this Act.' "

In a word, in virtue of the above and only amendment, made by the Public Service Company law to the said Full Crew Act, the Public Service Commission of the Commonwealth of Pennsylvania, defendant in error, succeeded to the *ministerial duty* of specifically enforcing the provisions of the Full Crew Act, which were to remain in full force and effect, as prescribed. (For full text of Full Crew Act see Appendix.)

The purpose of Section 7, in its relation to the other provisions of said statute also providing for the proper manning of railroad trains, appears from the opinion of the Supreme Court of the State of Pennsylvania in PENNSYLVANIA RAILROAD COMPANY *vs.* EWING *et al.* (the Pennsylvania State Railroad Commission), 241 Pa. 581, 592, in which case the constitutionality of all the provisions of said Full Crew Act, including this very Section 7, under both the Federal and State constitutions, were drawn in question in equity proceedings to enjoin the enforcement thereof, instituted by the present plaintiff in error, in the Court of Common Pleas of Dauphin County, Pennsylvania. The Supreme Court of the State in that case said:—

> "As to the alleged unconstitutionality of the seventh section, because 'it refers exclusively to the equipment

(Italics ours.)

of cars, and not to the proper manning thereof, the title discloses no other purpose than to promote safety by properly manning trains' a sufficient answer is found in what the Court below said in declining to affirm the plaintiff's tenth request for a legal conclusion: 'We cannot say that the seventh section is unconstitutional for the reasons stated in this point. The seventh section relates to trains composed of United States mail and express cars upon which are carried, in addition to the trainmen, postal clerks and express messengers, who are compelled to be travelers upon such trains. The Legislature doubtless had in mind the fact that such trains have very small, if any, platforms between the cars, so that there may be for express and mail purposes free communication between the cars carried in such trains, and *in order that such trains may be properly manned and protected by the trainmen,* provision has been made for the heating of the train and for means of exit *from a rear platform* and steps, *so that trainmen may perform their duties* of getting off the train to *examine* the *running gear* and other *appliances* of the cars, and give necessary *signals* in case the train is required to stop. Without some way of getting from the car to the ground, a *trainman could not perform all his duties,* and the train would not be *properly manned.*' * * *"

(a) *Proceedings before the Public Service Commission of the Commonwealth of Pennsylvania.*

The present case originated in a petition filed with the Public Service Commission of the Commonwealth of Pennsylvania, defendant in error, by the Order of Railway Conductors and Brotherhood of Railroad Trainmen, the other defendants in error, looking toward the enforcement of the said Section 7 of the Full Crew Act of 1911, as against the Pennsylvania Railroad Company, the plaintiff in error,

(Italics ours.)

with respect to the operation, by plaintiff in error, of a certain train No. 1019, made up of eight cars, viz: two express cars, and six United States mail cars, without the rear end of the rear car of said train, as so made up and operated, being equipped with a "platform of thirty inches in width, guard rails and steps" as required by Section 7 of said statute of the State.

In the proceedings before the Public Service Commission, it was admitted that the train in question was not made up, run and operated, as required by said Section 7 of the Full Crew Statute of the State, and the only defense interposed before the Public Service Commission to the violation of the statute in this respect, was, that the provisions of the said Section 7 were unconstitutional and unenforceable as being repugnant to the Safety Appliance Acts of Congress and the Postal Laws and the Regulations of the Interstate Commerce Commission and of the Postmaster General of the United States, made in pursuance thereof. It was urged that the Public Service Commission of the State had power to pass upon this constitutional question, should adjudge the provisions of said Section 7 of the said State statute invalid, and, upon that ground, refuse to enforce it as against the plaintiff in error.

The Public Service Commission, being a purely administrative body, commanded by the above quoted law of the State to enforce the provisions of said Act, and, *being without judicial power,* under the Constitution and law of the State, *to pass upon such question of constitutional validity* expressly declined to declare the Act invalid, and made an order, directing plaintiff in error to run and operate the train in question, in conformity with the provisions of Section 7 of said State Statute of 1911 (Record, pages 8, 9, 10).

(b) *Appeal from Commission to the Superior Court of Pennsylvania.*

The record further shows that the plaintiff in error, instead of challenging the constitutionality of said Section 7 on the above mentioned grounds, in appropriate proceed-

ings in a court of competent jurisdiction of the State, to restrain the Commission from enforcing said provisions of the Act, took an appeal from the determination and order of the Commission to the Superior Court of Pennsylvania, under the provisions of Article VI of the Public Service Company Law of July 26th, 1913 (P. L. 1374, 1420) as amended by the Act of June 3d, 1915 (P. L. 779, Record, page 165), assigning as error, *inter alia,* the holding of the Commission to the effect that that administrative body was without the judicial power necessary to declare the statutory provision of the State invalid (Record, page 167).

The Superior Court, holding that the action of the Commission had been without error, dismissed the appeal, the judgment being, "We find no error in the order made by the Commission, and it is now affirmed" (Record, page 201).

(c) *Appeal from the Superior to the Supreme Court of Pennsylvania.*

The Act of July 11th, 1917 (P. L. 808), further amending Section 30 of Article VI of the Act of July 26th, 1913, as amended by the Act of June 3d, 1915 (P. L. 779), had specifically provided as follows:—

> "SECTION 30. Within thirty days after the entry of any final judgment, order or decree, of the aforesaid Superior Court, any party to the record aggrieved thereby may appeal therefrom to the Supreme Court, if the jurisdiction of the Superior Court is in issue, or *if the case involves the construction or application of the Constitution of the United States or of any statute or treaty of the United States;* or, if the case involves the construction or application of the Constitution of Pennsylvania; *or if* the appeal to the Supreme Court, be *specially allowed* by the Superior Court itself, or by any one Justice of the Supreme Court. Such appeal shall be taken and prosecuted in the same manner, and

(Italics ours.)

with the same effect as is provided in other cases of appeal from the Superior Court to the Supreme Court."

Under the last above quoted provisions of the law of the State, plaintiff in error sought to take an appeal from the Superior Court to the Supreme Court, *the highest Court of* the State in which a decision in the suit could be had *as of right,* if the case had involved "the construction or application of the Constitution of the United States, or of any statute or treaty of the United States."

The *Supreme Court* of the State *refused,* or *dismissed,* the appeal under the said Act of July 11th, 1917, thereby, in legal effect, holding that the case on appeal to the Superior Court, and decided by that Court, had *not involved the decision of the Federal constitutional question* which the plaintiff in error had attempted to have the Public Service Commission and the Superior Court of the State rule upon.

Nevertheless, the plaintiff in error has taken this writ of error from the Supreme Court of the United States to the *Superior Court* of Pennsylvania to review the judgment of that *lower appellate court* of the State.

It was not controverted in the proceedings before the Commission, that the plaintiff in error had in all respects complied with the Safety Appliance Acts of Congress, and the postal laws and the regulations of the Interstate Commerce Commission and of the Postmaster General of the United States with respect to the type and equipment of the United States mail car, which the plaintiff in error had elected to place at the rear end of the train in question, as it was made up and operated over its road. There was nothing to show that Congress had either directly or indirectly made any regulations upon the subject of rear end platforms on trains of the character in question, such as were prescribed by Section 7 of the said Act of 1911 of the State of Pennsylvania, relating to the make-up and operation of trains of this character, in order that they might be properly manned for the promotion of the safety of the traveling public and employees. Plaintiff in error

showed no intent on the part of Congress, in any of the acts or regulations referred to, to supersede or suspend the exercise by the State of its police power to legislate upon that subject for the purpose of promoting the public safety.

ARGUMENT.

I. THE JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA IS NOT REVIEWARLE ON THE WRIT OF ERROR TO THAT COURT FOR THE REASON THAT NO FEDERAL QUESTION WAS INVOLVED OR DECIDED. THE SUPERIOR COURT OF PENNSYLVANIA IS NOT "THE HIGHEST COURT OF THE STATE" IN WHICH A DECISION IN THE SUIT COULD HAVE BEEN HAD, IF THE CASE HAD INVOLVED THE DECISION OF THE FEDERAL CONSTITUTIONAL QUESTION NOW URGED.

In DESAUSSURE *vs.* GAILLARD, 127 U. S. 216, the general rule is stated, that to give this Court jurisdiction of a writ of error to a State Court, "It *must appear affimatively*, not only that a Federal question was presented for decision to the State Court, but also that the decision of such question was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it." (See also JOHNSON *vs.* RISK, 137 U. S. 300, 34 L. Ed. 683; RODGERS *vs.* CLARK IRON COMPANY, 217 U. S. 589; ERIE RAILROAD COMPANY *vs.* PURDY, 185 U. S. 148; 46 L. Ed. 847.)

In LEATHE *vs.* THOMAS, 207 U. S. 93, the Court said, per Holmes, J.:—

> "It is admitted that the general and well settled rule is that, in a case coming from a State Court, this Court can consider only Federal questions. * * * It is admitted further that a *decision upon those questions must have been necessary to the decision of the case,*

(Italics ours.)

> so that if the judgment complained of is supported also upon other and independent grounds, the judgment must be affirmed, or the writ of error dismissed, as the case may be. MURDOCK *vs.* MEMPHIS, 20 Wall, 590, 22 L. Ed. 429."

Where it does not affirmatively appear that a Federal question was presented for decision to the highest Court of the State in which a decision of such question could be had, or where it does not affirmatively appear that the decision on such question was necessary to the determination of the cause, it is immaterial to the jurisdiction of the Federal Supreme Court whether the State Court may have expressed an opinion as to the Federal question, or rightly or wrongly decides such Federal question.

Thus in ARKANSAS SOUTHERN RAILROAD COMPANY *vs.* GERMAN NATIONAL BANK, 207 U. S. 270, the Court said, per Holmes, J., that:—

> "even when an erroneous decision upon the Federal question is made a ground if the judgment also is supported upon another which is adequate by itself, and which contains no Federal queston, the same result must follow, &c."

In CHESAPEAKE & OHIO RAILROAD COMPANY *vs.* McDONNELL, 214 U. S. 191, 53 L. Ed. 963, the Court said, per Day, J.:—

> "To lay the foundation for such right of review, *it is necessary to bring the Federal question in some proper manner to the consideration of the State Court,* whose judgment it is sought to review." (See also NEWMAN *vs.* GATES, 204 U. S. 89; ERIE R. Co. *vs.* PURDY, *supra.*)

It is apparent from the record in the case at bar that the above "statutory prerequisites" for the exercise of the re-

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viewing powe. of this Court are wanting, and that for these reasons the judgment of the *Superior Court* of Pennsylvania (which under the local law of that State is a Court of *inferior appellate jurisdiction* in all cases involving the constitutionality of a statute of the State) should be affirmed or the writ of error dismissed (NEWMAN *vs.* GATES, 204 U. S. 89, 51 L. Ed. 385).

The said statutory prerequisites *do not affirmatively appear* in this case because:—

1. If the proceedings in the appellate courts of the State (to wit, the Superior Court and afterwards the Supreme Court of the State), had involved the decision of the Federal constitutional question urged by the plaintiff in error, the said Superior Court of the State was not the highest Court of the State in which a decision in the suit could be had. The Supreme Court was the highest Court of the State having such jurisdiction.

2. The said Federal constitutional question was not presented for decision to the lower, Superior, Court of the State or legally involved in the decision of that Court. The dismissal by the Supreme Court of the State of the appeal taken by plaintiff in error to the Superior Court rests upon this ground.

3. If, under the local law of the State, the said Federal constitutional question had been presented to the Superior Court for decision, or if the decision of such question by the said Superior Court had been necessary to the determination of the case, the writ of error should and would have been taken to the Supreme Court of the State, since, under the State law, said Supreme Court was the highest Court of the State in which a decision in the suit supposed to involve such question could have been had as matter of legal right under the State law.

Never before, so far as we know, has it been attempted to have this Court review the judgment of the lower Su-

perior Court of Pennsylvania upon a Federal constitutional question, alleged to have been therein involved. The reason that a writ of error for that purpose cannot be sustained manifestly is, that, under the State law, the Supreme Court and not such Superior Court, is the highest Court of the State in which a decision of such a question can be had.

Supposing such alleged question *in the present case* to have been presented for decision to the Superior Court of the State, that Court was *not the highest* Court of the State having appellate jurisdiction to pass upon it, *but the lowest.*

That this is so appears from the explicit provisions of the Act of July 11th, 1917 (P. L. of Pennsylvania, 808), regulating the right of appeal from the Superior Court to the Supreme Court of the State in all cases of appeal from the determinations and orders of the Public Service Commission of Pennsylvania.

Prior to the enactment, on July 11th, 1917, of said last mentioned statute the prior Act of June 3d, 1915 (P. L. Pa. 779), gave to aggrieved parties a *right of appeal* from the Superior Court to the Supreme Court in all such cases, whether they involved the decision of a constitutional question or not.

By said amendatory Act of July 11th, 1917, the judgment of said Superior Court was made final and unappealable in all such cases in which no constitutional question was involved, unless the jurisdiction of the Superior Court was itself in issue, or *unless* "the appeal to the Supreme Court be *specially allowed* by the Superior Court itself, or by any one justice of the Supreme Court" *i. e.,* for reasons other than the involution of a constitutional question. But the judgment of the Superior Court remained *subject* to the *absolute right* of appeal to the Supreme Court, where "the case involves the *construction or application of the Constitution of the United States* or *of any statute* or treaty *of the United States.*" In all cases involving such constitutional questions the Supreme Court of the State is always the highest judicial authority in the State.

(Italics ours.)

Thus Section 2 of said Act of July 11th, 1917, amending Section 30 of the original Public Service Company law of the State (viz. the Act of July 26th, 1913 (P. L. 1374, 1428), as that section had been previously amended by the Act of June 3d, 1915 (P. L. Pa. 779), explicitly provides:

> "Section 30. Within 30 days after the entry of any final judgment, order, or decree of the aforesaid Superior Court, any party to the record aggrieved thereby may appeal therefrom to the Supreme Court, if the jurisdiction of the Superior Court is in issue, or *if the case involves the construction or application of the constitution of the United States or of any statute or treaty of the United States*, or if the case involves the construction or application of the constitution of Pennsylvania; or if the appeal to the Supreme Court be specially allowed by the Superior Court itself or by any one justice of the Supreme Court. * * *"

It was under the above provisions of the law of the State that the plaintiff in error "petitioned *for leave* to appeal to the Supreme Court of the State of Pennsylvania, but such leave was denied August 6th, 1917 (Record, page 163)," as stated in the brief of the plaintiff in error (page 7).

Counsel for the plaintiff in error, taking the writ of error to the Superior Court of Pennsylvania, upon the assumption that the Superior Court was the "highest court of (*a*) the state in which a decision in the suit could be had" upon the alleged Federal constitutional questions, do so *in the teeth of the above quoted explicit provisions* of the State Act of July 11th, 1917, to the contrary. For it is manifest, that, *if the alleged Federal Constitutional questions*, now urged by them as having been involved in the decision of the Superior Court, *had been presented to that Court for decision*, or *if a decision upon those questions had been necessary* to the decision of the case by that Court, it would have been *wholly unnecessary for them to have petitioned*

(Italics ours.)

the Supreme Court of Pennsylvania for a special allowance of an appeal to that Court. The right to take such an appeal could not, and would not, have been denied them, since the case, as decided by the judgment of the Superior Court, would have involved "the construction or application of the constitution of the United States" and the right to an appeal would have been conferred upon them by the *express allowance of the statute itself*. It follows, in view of the express provisions of the said statute, that the *Supreme Court* of the State was *"the highest court of the State in which a decision in the suit could be had,"* if the judgment of the lower, Superior, Court had actually involved the decision of the Federal constitutional questions which are now urged, and that the *judgment of the Supreme Court* of the State (Per Curiam), dismissing the appeal or refusing to allow it, was *in legal effect a judgment under said statute that no such constitutional questions were involved in the case for decision* (Record, page 163.)

That this is the legal effect of the record brought to this Court for review, and that, by the method of procedure, pursued by the plaintiff in error, first, before the Public Service Commission of Pennsylvania (a purely administrative body), and afterwards, on appeal, to the Superior Court, and then finally to the Supreme Court of the State, the constitutional validity of the seventh section of the Full Crew Act of 1911 could not be, and was not, lawfully presented for judicial decision in either of said appellate courts, and accordingly under the State law was not decided by either of them, is quite clear. The Supreme Court of the State dismissed the appeal from the judgment of the Superior Court for these reasons. It is not to be conjectured, and the plaintiff in error will not contend, that the Supreme Court of the State refused to allow the appeal from the judgment of the Superior Court by deciding adversely the contention of the plaintiff in error that the legislative enactment in question was invalid, as being repugnant to the Constitution of the United States, for, if

(Italics ours.)

that were so, the writ of error should have been taken to the Supreme Court of Pennsylvania. Neither is it lawfully to be presumed, that the Supreme Court in refusing to allow the appeal acted arbitrarily and contrary to the plain provisions of the said Act of Assembly.

Under the State law, as well as under the judicial action of the Supreme Court of the State pursuant thereto, it is clear that the federal constituional quesions here urged were not involved. The reasons are fundamental:—

The Public Service Commission of Pennsylvania, *a purely administrative body* of the State, before which the proceedings originated, was clothed with *no judicial power* to adjudicate any question of the constitutional validity or enforceability of Section 7 of the said Full Crew Act of the State.

The *State Constitution,* Article V, Section 1 (1 Stewart's Purdon's Digest 173), provides that "the *judicial power* of this Commonwealth shall be *vested* in a Supreme Court, in Courts of Common Pleas, Courts of Oyer and Terminer and General Jail Delivery, Courts of Quarter Sessions of the Peace, Orphans' Courts, Magistrate's Courts, and *in such other courts as the General Assembly may from time to time establish.*"

It is certain that the General Assembly, in creating the Public Service Commission of the State, and conferring purely administrative power and authority upon it, *did not thereby establish a court* with judicial power to declare statutes of the State invalid as being repugnant to the Federal or State Constitution—especially a statute which by the Act of Assembly creating it the said commission was expressly charged with the specific duty of enforcing.

Thus Article IV, Section 1 of the Public Service Act of the State, viz., Act of July 26th, 1913 (P. L. Pa. 1374, 1396), provides that:—

> "It shall be the *duty* of the Public Service Commis-
> panies, and of carrying out the provisions of this act, *an administrative body or commission is hereby estab-*

(Italics ours.)

> *lished,* to be known as the Public Service Commission of the Commonwealth of Pennsylvania, and in that name it shall issue its orders and certificates, and may become or be made a party to legal proceedings."

And by Article V, Section 1 (P. L. 1913, 1402) of the same Act, it is provided:—

> "The commission shall have general *administrative power and authority,* as provided in the Act to supervise and regulate all Public Service Companies doing business within this Commonwealth."

With respect to the said Full Crew Act of the State in *particular,* viz., Act of July 19th, 1911, P. L. 1053, 1435, including Section 7 thereof, the said Public Service Act of 1913 declares in Section 53 of Article VI:—

> "It shall be the *duty* of the Public Service Commission of the Commonwealth of Pennsylvania *to enforce* the provisions of this act," after declaring that "this act," viz: the said Full Crew Act "shall remain in full force and effect" (*supra,* pages 2, 3).

Thus, under the express mandate of the Public Service Act, the Legislature imposed upon the Public Service Commission the *mandatory duty of enforcing* the provisions of said Full Crew Act, as the Commission found them written in that statute, which were to remain in full force and effect. The Commission was bound to obey this mandate of the statute. It was without power to set it aside.

Under both the constitution and law of the State, it was clothed with no judicial power or authority to declare any of said provisions invalid, and to decline to enforce it upon that ground. It would have been a manifest usurpation of a prerogative belonging exclusively to the Judicial Department of the State Government for the Commission to have

(Italics ours.)

undertaken to pass judgment upon the constitutionality of the Act, which it was the sole function, power and duty of said Commission to enforce.

In STATE *ex rel vs.* PUBLIC SERVICE COMMISSION OF MISSOURI, 259 Mo. 704, 727, the Supreme Court of Missouri, on this point said:—

> "Respondent (The Public Service Commission of Missouri), disavows power to repeal a statute, or to declare a statute unconstitutional. That disavowal is correct. The repeal of a statute is a legislative act; to declare an act unconstitutional is a judicial act. In this state all judicial power is vested in the courts (Section 1, Article VI, Constitution), and legislative power is vested in the General Assembly (Section 1, Article IV, Constitution). So respondent claims only administrative powers. That claim is justified."

(See also Director of Posts *vs.* Inchausti & Co., P. U. R. 1916E. 849; Colburn *vs.* Ry. Co., P. U. R. 1916A, 424; Washington Water P. Co. *vs.* Montana Water P. Co., P. U. R. 1916E, 144; *Re* Los Angeles, P. U. R. 1916F, 629; *Re* Ynchausti & Co., P. U. R. 1917A, 429; *Re* Bridgeton, etc., Traction Co., P. U. R. 1918B, 357.)

The same conclusion, of course, results under the Constitution and law of Pennsylvania.

Thus, in BELLEVUE ETC. RAILWAY COMPANY, 32 Pa. C. C. 243, Carson, Attorney General of Pennsylvania, in an opinion to Governor Pennypacker, with respect to the authority of the Governor to treat a State statute as unconstitutional, said:—

> "It must be borne in mind that the Act of May 29th, 1901, was duly approved by the then Governor of the State, and stands upon the statute book as an existing law, which so far as I know has never been interpreted by the courts, or declared to be unconstitutional.
>
> "I do not perceive that it is a part of the executive

function in dealing with an Act of Assembly which has not been declared unconstitutional by the Court to undertake to set it aside upon a line of argument, which, if addressed to a Court, might induce it to declare the Act to be in violation of the Constitution. To do so would require the exercise of judicial power which belongs to a separate department of the government. While the Governor is sworn to obey the Constitution and to uphold the laws, yet this *does not clothe him with judicial authority* or impose upon him the responsibility of passing upon questions which can be more properly addressed to the courts * * *. This does not constitute a part of the executive function.

"I am of opinion that it is *not within the scope of your duty or authority to consider the question,* but that you are *bound for the purposes of executive administration* of the law, as it is found upon the statute book, *to enforce its provisions,* and *to assume the constitutionality of the Act.*"

This being the duty, under the State Constitution, of even the Supreme Executive Officer of the State, it was, of course, likewise the duty of the subordinate executive officers of the State, viz: The Public Service Commission, likewise to assume the constitutionality of the Act here in question, and to enforce it as commanded by the explicit provisions of the statute defining said Commission's duties and powers, until such time as a court of competent jurisdiction in appropriate proceedings, pronounced it invalid, as being repugnant to either the State or Federal Constitution.

The Public Service Commission of Pennsylvania, in this case, properly conceiving its duty and the limits of its authority in the premises, *acted accordingly.* It *expressly disavowed* any power or jurisdiction to declare Section 7 of said Full Crew Act unconstitutional, and declined to enter-

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tain the complaint of the present plaintiff in error in that regard, as being a matter manifestly beyond its competency to pass upon. This explicitly appears from the report of the Commission (Record, page 9), as follows:—

> "Has the Federal Government by legislation assumed jurisdiction and control of the subject matter to the exclusion of the States?
>
> "We are not persuaded that it has, but here again we must differentiate between the administrative duty and responsibility of the Public Service Commission and the authority of the Courts. *It is not for us to set aside the plain statutory provision of our own State.* If there be any conflict between the laws of this Commonwealth and those enacted by the Federal Government, not clearly apparent, we must be guided to a decision by judicial utterance. In the absence thereof, we must accept and follow administratively the terms and provisions of the Act, which we are charged with the duty of enforcing."

Plaintiff in error having interposed no other defense to its non-compliance with the provisions of Section 7 of said Act, than such complaint as to its alleged unconstitutionality, and the Commission, being clothed with no judicial power, and having only the aforesaid purely administrative or ministerial duty to perform, had no alternative but to decline to pass upon the Federal constitutional question, and to enforce the provisions of said Act, as it found them upon the statute book.

Since the Commission, properly thus declined to pass upon the question of constitutionality, as being beyond its jurisdiction or authority, it followed that there was *no decision of the said question presented to the Superior Court of the State for review*, upon the appeal taken, under the State law (Act of June 3d, 1915, P. L. Pa. 779, *supra*), to that Court from the Commission's said action.

(Italics ours.)

It will be observed that on the said appeal to the Superior Court, the plaintiff in error, respondent in the proceedings before the Commission, and appellant in the Superior Court, *inter alia*, assigned as error, the above finding and holding of the Commission, to the effect that it was not for that administrative body "to set aside the plain statutory provision of our own State, &c.," *supra* (Record, page 167).

The judgment of the Superior Court was, as we have seen, that, "we find no error in the order made by the Commission, and it is now affirmed" (Record, page 201).

Although, in the opinion of the Superior Court on appeal, the argument of appellant as to unconstitutionality was to some extent referred to, such reference was purely *obiter* and the Court significantly said, "nor can we consider *in this case* whether the provisions and requirements of the Act are unreasonable and arbitrary and within the power of the Legislature of this Commonwealth to enact." (Record, page 200.)

In view of the fundamental consideration that, under the Constitution and law of the State, the record shows that the Federal constitutional question had not been lawfully presented to the Public Service Commission for decision, had not been decided, and all intent to decide it had been expressly disavowed, by that administrative body, and that the Supreme Court of the State had disallowed an appeal from the Superior Court to that Court, under the provisions of the said Act of 1917, of the State, which expressly allowed such appeal, had the case actually involved the constitutional question, as asserted, it is manifest that the judgment of the Superior Court, to which the writ of error in this case is attempted to be sustained, does not involve the decision of the Federal question or questions attempted to be here argued for the plaintiff in error.

It being the settled law, that "it *must appear affirmatively* not only that a Federal question was presented for decision to the highest Court of the State, having jurisdiction, but, that its decision was necessary to the determination of

(Italics ours.)

the cause, and that it was actually decided, or that the judgment, as rendered, could not have been given without deciding it," (DE SAUSSURE *vs.* GAILLARD, 127 U. S. 216; 32 Law Ed. 125; JOHNSON *vs.* RISK, 137 U. S. 300; 34 Law Ed. 683, 686), it follows that in this case, the Supreme Court of the United States is without jurisdiction to review the judgment of the Superior Court of Pennsylvania, and that, in consequence, said judgment should be affirmed or the writ of error dismissed (LEATHE *vs.* THOMAS, 207 U. S. 93, *supra*; MILLS *vs.* BROWN, 16 Peters 525; 10 L. Ed. 522.)

The proper method for the plaintiff in error to have pursued, under the State law and practice, in order to raise the Federal question in the Courts of the State of Pennsylvania, would have been a proceeding, in a trial Court, by bill in equity for an injunction to restrain the enforcement of the said Section 7 of said Full Crew Act of 1911, as previously pursued by it in PENNSYLVANIA RAILROAD COMPANY *vs.* EWING, *et al.*, 241 Pa. 581 (1913). By that procedure, or by raising the question, by way of defense to judicial proceedings instituted by the Commission for the enforcement of the Act, the said Federal constitutional questions would have been lawfully presented for judicial decision in the Courts of the State, and ultimately by the Supreme Court of the State, which Court, and not the Superior Court, is the Court of highest authority in the State in which a decision in such suit, involving such a question, could thus have been had.

Plaintiff in error having elected not to do so, in the present case, it resulted that the said Federal constitutional questions were neither presented for decision, nor decided by either the Superior or the Supreme Courts of Pennsylvania, and hence, there is nothing before this Federal Supreme Court for review.

Since, if the asserted Federal constitutional questions had been legally involved in the judgment of the Superior Court, the appeal to the Supreme Court of the State would have

been matter of legal right under the State Act of July 11th, 1917, *supra*, and no leave of court would have been necessary or refused, the decisions in cases like GREGORY *vs.* MCVEIGH, 23 Wall. 294, are not in point. Under the State law and practice, before referred to, the status of the case is essentially like ERIE R. R. Co. *vs.* PURDY, 185 U. S. 148 and NEWMAN *vs.* GATES, 204 U. S. 89.

II. ASSUMING FOR THE SAKE OF ARGUMENT THE JURISDICTION OF THE COURT, NEVERTHELESS, SECTION 7 OF THE PENNSYLVANIA FULL CREW ACT OF JUNE 19th, 1911, (P. L. PA. 1911, 1053) IS NOT UNCONSTITUTIONAL OR UNENFORCEABLE FOR ANY OF THE REASONS URGED BY THE PLAINTIFF IN ERROR.

It is with no desire to avoid the decision by this Court of the Federal question argued by plaintiff in error that we have considered the preliminary matter of want of jurisdiction. Congress, however, having determined the classes of cases, and under what conditions alone, the power of the Court may be exercised to review the judgments of the courts of the States on writ of error, it is, of course, elementary that such jurisdiction cannot be conferred merely by the consent of the parties (MILLS *vs.* BROWN, 16 Peters 525; 10 L. Ed. 522).

It is for this latter reason only, that, in the forepart of this brief we have felt it our duty to direct the attention of the Court to the specific provisions of the statutes of Pennsylvania, in connection with the fundamental organic law of the State (in the light of which the record brought up for review is properly to be construed), as showing that the decision of the Federal constitutional questions argued by the plaintiff in error was not necessary for the determination of the case by the State Court, and was not decided by the judgment of the Superior Court of the State (lower Appellate Court), to which the writ of error was taken.

It will be *assumed for the purpose of argument*, however,

in what follows, tnat the alleged question of constitutionality is legally presented for decision.

The Act of June 19th, 1911, P. L. 1053, *supra*, known as the Pennsylvania Full Crew Act, is a State statute, of the kind which this Court has, at least twice before, held v lid as against constitutional attack under the Commerce Clause and Fourteenth Amendment (CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY *vs.* ARKANSAS, 219 U. S. 453, 55 Law Ed. 290; PITTSBURGH, ETC., R. Co. *vs.* INDIANA, 223 U. S. 713).

It is entitled, "An Act to promote the safety of travelers and employees upon railroads by compelling common carriers by railroad to *properly man* their *trains.*" As means for the promotion of such public safety, the Legislature of the State has prescribed that the various classes of trains therein specified shall be run and operated within the boundaries of the State with crews of a certain character and number of men.

As a further provision that such trains should be properly manned by said crews for said purposes of safety, the Legislature, in Section 7 of the Act, required, in the case of trains carrying United States mail and express cars, that the rear end of the train (which naturally would be a car of some sort) should be equipped with an end "*platform* of thirty inches in width."

Thus, it was provided:—

> "SECTION 7. That it shall be unlawful for any Railroad Company, its officers or agents, officers of the Court, Receiver, or any person or persons doing business in this Commonwealth to run or operate over its road, or part of its road, or permit to be run or operated over its road, or any part of its road, any train consisting of United States mail or express cars without the rear end of the rear car so equipped with

(Italics ours.)

> exit free from obstruction, platform of thirty inches in width, guard rails and steps, also heating appliances to maintain a temperature of sixty five degrees."

The constitutionality of the whole of the said Act, including this Section 7, was challenged in equity proceedings for an injunction to restrain its enforcement, instituted by the Pennsylvania Railroad Company (the present plaintiff in error) against the State Railroad Commission of Pennsylvania, in the Court of Common Pleas, Dauphin County, Pennsylvania, and there held valid under both Federal and State Constitutions. An appeal was then taken to the Supreme Court of Pennsylvania, which affirmed the judgment of the trial Court in an elaborate opinion in PENNSYLVANIA RAILROAD COMPANY *vs.* EWING, 241 Pa. 581, 49 L. R. A. (N. S.) 977. From that judgment of the highest Court of the State of Pennsylvania, the Pennsylvania Railroad Company (the present plaintiff in error) *took no appeal to this Court.*

In passing upon the question of the constitutionality of said Section 7 of the Act, the Supreme Court of the State had occasion to point out that, in accordance with the title of the enactment, the provisions of this section had for their object the proper manning of trains, and referred to the occasion for such enactment as follows:—

> "As to the alleged unconstitutionality of the seventh section, because 'it refers exclusively to the equipment of cars, and not to the proper manning thereof, the title disclosed no other purpose than to promote safety by properly manning trains,' a sufficient answer is found in what the Court below said in declining to affirm the plaintiff's tenth request for legal conclusion: 'We cannot say that the seventh section is unconstitutional, for the reasons stated in this point. The seventh section relates to trains composed of United States mail and express cars, upon which are carried,

in addition to the trainmen, postal clerks and express messengers, who are compelled to be travelers upon such trains. The Legislature doubtless had in mind the fact that such trains have very small, if any, platforms, between the cars, so that there may be for express and mail purposes free communication between the cars carried in such trains, and *in order that such trains may be properly manned and protected by the trainmen.* Provision has been made for the heating of the trains, and for means of exit from a *rear platform,* and steps, *so that trainmen may perform their duties* of getting off the train to *examine* the *running gear* and other *appliances* of the cars, and give necessary *signals,* in case the train is required to stop. Without some way of getting from the car to the ground, a *trainman could not perform all his duties,* and the train would not be *properly manned.* The section is, in our opinion, germane to the subject matter of the bill, and is not unconstitutional for the reason stated in this request."

As thus construed by the highest Court of the State, in affirmation of the trial Court, the purpose of the provision of Section 7 of said Act, with respect to rear-end platforms on trains of this character was to provide for the proper manning of the trains, as operated by the specified crews. The section obviously concerned, directly and primarily, the *make-up* and operation *of trains,* in which "stub end" United States mail and express cars were carried, it being the implied judgment of the Legislature that a train of such character could not be properly manned for purposes of safety without there being a platform of thirty inches in width at the rear end.

The train involved in the present case was a train of this character, consisting, as it did, of six United States mail cars and two express cars. It is admitted, however, that, as it was so made up and operated within the State by

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the Pennsylvania Railroad Company that one of the stub end mail cars was the last car of the train, it was not run and operated in conformity with said statutory requirements.

It is obvious that *there was nothing in said section which required the railroad company thus to place a United States mail car at the rear end of the train.* All that was required was, that the rear car of a train, composed of stub end cars of that character, without platforms, should be a car with a rear end platform of thirty inches in width, irrespective of what car the railroad company chose to use as such rear end unit of such a train.

As the Superior Court said, there was nothing in the Act, or "nothing in the order made by the Public Service Commission, defining the place in the train which the mail car is to take." The Act, in the seventh section, dealt with a different thing. It dealt with the make-up of a train composed of cars of such stub end character. Just as the Locomotive Headlight Statute of Georgia, in ATLANTIC COAST LINE RAILROAD COMPANY *vs.* GEORGIA, 234 U. S. 280; 58 Law Ed. 1312, *regulated* the *front* or *head end* of the train for purposes of safety in the exercise of the State police power, so these provisions of the Pennsylvania Act regulated *the rear* end of the train by requiring a thirty-inch platform thereat, in order that the train might be properly manned by the specified crews.

Nevertheless, the suggestion is now made by the plaintiff in error that the said enactment (otherwise unquestionably within the police power of the State) is void, and of no force or effect, because of the Safety Appliance Acts and Postal Laws of Congress and the Federal regulations pursuant thereto.

The contention is, that Congress, through said laws and regulations, relative to the safety *appliance* equipment and *type* of mail cars, has regulated the particular subject which is regulated as above by the State statute, and has thereby manifested an intent to supersede the said police regulations of the State.

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This notion that Section 7 of the Full Crew Act of the State is void on the ground of repugnancy to the Safety Appliance Acts and Postal Laws is a new one with the plaintiff in error.

In PENNSYLVANIA RAILROAD COMPANY *vs.* EWING *et al.*, 241 Pa. 581 (1913), *supra*, the plaintiff in error attacked the validity and enforceability, under both the *Federal* and State *Constitution*, of each and every section and provision of said State statute, including Section 7. The Court of Common Pleas of Dauphin County dismissed the bill in equity that was brought to enjoin the enforcement of any of the provisions of said Act, holding the latter to be "an exercise of police power possessed by the Legislature of the State that the means designated therein for the accomplishment of the purpose of the legislation are appropriate, and have a real relation to the subject matter, that its enforcement will not violate the provisions either of the Constitution of Pennsylvania or the United States, prohibiting the taking of property without due process of law; that it will not deprive any one of the equal protection of the law; that *it is not a regulation of interstate commerce, forbidden by the Constitution of the United States.*" The decree of the Court was, that said Act "is in all respects valid; that the plaintiff is not entitled to the relief prayed for, and accordingly plaintiff's Bill of Complaint is now dismissed."

On the appeal to the Supreme Court of Pennsylvania, the plaintiff in error, *inter alia*, assigned as error:—

> "9. The learned Court erred in declining to hold the Act of June 19th, 1911, to be in violation of Article I, Section 8, of the Constitution of the United States, authorizing Congress to *regulate commerce* among the several States," etc.

The Supreme Court of the State, affirming the decree of the Court below, and dismissing the appeal, referred to the decision in CHICAGO, ETC., RAILWAY COMPANY *vs.* ARKANSAS, 219 U. S. 453, in which this Court held that the

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similar Full Crew Act of the State of Arkansas "is not in any proper sense a regulation of interstate commerce, nor does it deny the equal protection of the laws. Upon its face, it must be taken as directed, not against interstate commerce, but, as having been enacted in aid, not in obstruction of such commerce, and for the protection of those engaged in such commerce. * * * It is a means employed by the State to accomplish an object which it is entitled to accomplish, and such means, even if deemed unwise are not to be condemned or disregarded by the courts, if they have a real relation to that object. Undoubtedly, Congress in its discretion, *may take entire charge of the whole subject of the equipment* of any of said cars and establish such regulations as are necessary and proper for the protection of those engaged in interstate commerce. *But it has not done so* in respect of the number of employees to whom may be committed *the actual management* of interstate *trains* of any kind. *It has not established any regulations on that subject,* and until it does statutes of the State, not in their nature arbitrary, which relate to the rights and duties of all within the jurisdiction must control. This principle has been firmly established, and is a most wholesome one under our systems of government, Federal and State."

The Supreme Court of the State concluded its opinion as follows:—

> "The chief franchise of the appellant is the right or privilege to carry passengers or freight for pay, and the safety of the former and of employees needed in the operation of trains means at all times the safety of multitudes of people committed to the care of the appellant under its franchises. *To provide for the safety of these multitudes is the sole purpose of the Act of 1911.* The Legislature was not only empowered to pass it, but was charged with the duty of enacting it, for the safety of those within the contemplation of the Act requiring it. That was a purely legislative ques-

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tion with which the courts can no more interfere than they can with the reasonable means adopted by the Legislature to secure the needed safety."

The *plaintiff in error*, the Pennsylvania Railroad Company, which is the plaintiff in error in this case, *took no appeal to this Court* by writ of error from the judgment of the Supreme Court of the State, in PENNSYLVANIA RAILROAD COMPANY *vs.* EWING, *supra*.

As before said, the present argument of this same railroad company, in this further attempt to strike down the provisions of Section 7 of said Act involves a *new conception*.

In PENNSYLVANIA RAILROAD COMPANY *vs.* EWING, *supra*, though the constitutionality of Section 7 was directly attacked under both the Federal and State Constitutions, it never occurred to the pre-eminent counsel, the late John G. Johnson, Esq., who represented the Pennsylvania Railroad Company in that case, to even suggest in argument that the provisions of Section 7 of said Act were unconstitutional, on the ground that Congress had established regulations on the subject matter of Section 7 of the State statute, so as to supersede that part of the State enactment.

Plaintiff in error now state (brief for plaintiff in error, page 11) that, "the *question for decision*, and *the only one of importance involved*, would seem to be whether *Congress* itself, or the *Interstate Commerce Commission*, by any regulation made, under authority conferred upon it by law, has so exercised its paramount authority over the character, dimensions and safety *appliance equipment* of *cars* to be used in Interstate Commerce as to preclude the application to trains moving in such commerce, by provision of local laws, which either expressly or in effect require the use, whether on the rear end *or elsewhere* in such trains, of a car differently or additionally equipped."

We agree that this is the only question of any "importance" that could possibly arise in any case under the Federal laws and regulations upon which plaintiff in error relies.

(Italics ours.)

Assuming, as before stated, that question to be in issue in this case, we agree that the only Federal enactments or regulations which can be considered at all relevant are the *Safety Appliance Acts* of Congress and the *regulations* made by the *Interstate Commerce Commission*, pursuant to the authority thereof, and *not the postal laws and regulations* under which the Postmaster General of the United States has regulated the type of mail car for the transportation of United States mail.

To the extent that there is any question at all, and assuming, as we have said, that the question is an issue, the statement of the question as made by the plaintiff in error is substantially accurate, except that it erroneously implies that the, "provisions of local laws," as therein referred to, "either expressly or in effect require the use, whether on the rear end *or elsewhere* in such trains, of a car differently or additionally equipped."

It is obvious that the provisions of Section 7 of the local Full Crew Act of the State of Pennsylvania, do not, "either expressly or in effect require the use, whether on the rear end *or elsewhere* of such trains, of a car differently or additionally equipped."

As we have hereinabove pointed out, all that is required by the provisions of Section 7 of said Act, in dealing with the *make up* and *operation* of *trains* composed of United States mail and express cars, is that the rear end of the rear car of said train, *i. e.*, the *rear end* of said *train*, shall be equipped with a *platform* of thirty inches in width for the *proper manning* of the *train*, for purposes of safety in the operation thereof. In no other part of such a train, but the said rear end, does the statute require any of the cars to be equipped with such a platform. *The Act deals only with the rear end of the train*, in the same manner as the Georgia Locomotive Headlight Act dealt with the *front end* of the *train* for purposes of safe operation.

Now, what are the principles that govern the matter?

We admit that the Act of March 3d, 1870 (20 Stats. 358) providing that, "all cars or parts of cars used for

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Railway Mail Service," are required to be, " of such style, length and character, and furnished in such manner as shall be required by the Postmaster General, and shall be constructed, fitted up, and maintained, heated and lighted by and at the expense of the railroad companies."

We, of course, admit that the said "Act of 1870 and the specification of the Postmaster General issued pursuant to its terms, and also the Federal Safety Appliance Acts and the regulations of the Interstate Commerce Commission, respecting matters of detail pursuant thereto, are constitutional and valid laws of the United States." (Brief of plaintiff in error, pages 12, 13.)

We further admit the general rule, pursuant to which PRIGG *vs.* PENSYLVANIA, 16 Peters 536; ERIE RAILROAD COMPANY *vs.* NEW YORK, 233 U. S. 671; SOUTHERN RAILWAY COMPANY *vs.* RAILROAD COMMISSION OF INDIANA, 236 U. S. 439, and the other cases cited by the plaintiff in error were decided.

We concede the general rule of constitutional law to be, that " if Congress have a constitutional power to regulate *a particular subject,* and *they do actually regulate it* in a given manner, and in a certain form, it cannot be that the State Legislatures have a right to interfere, and as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does do is as expressive of what its intention is as direct provisions made by it." (PRIGG *vs.* PENNSYLVANIA, *supra.*)

"*When* Congress has taken *the particular subject matter* in hand, *coincidence* is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." (CHARLESTON ETC. R. CO. *vs.* VARNVILLE FURNITURE CO., 237 U. S. 597.)

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The above rule of law results from "the necessary condition of the supremacy of the Congresstional power." (ERIE R. Co. *vs.* NEW YORK, 233 U. S. 671.)

There is no dispute here as to the existence of this principle, but to the *application* of it in the present case.

It does not at all follow, that because Congress, for the purpose of promoting the safety of travelers, and of employees, on railroads, engaged in Interstate Commerce, has required either directly, or through the regulations of the Interstate Commerce Commission, that railroad cars shall be equipped with certain safety appliances such as air brakes, automatic couplers, hand holds, &c;. that the several States are thereby precluded from making or enforcing, in the exercise of their police powers, any other regulations designed to further promote the safe operation of railroad trains.

When the constitutionality of the Full Crew Act of the State of Arkansas was challenged in this Court, in CHICAGO ETC. RAILWAY COMPANY *vs.* ARKANSAS, 219 U. S. 453, the same argument as is advanced by the plaintiff in error here, was vigorously urged and held by the Court to be inapplicable. The principles above referred to were freely admitted, but, this Court, by Mr. Justice Harlan, said that:

> "Local statutes directed to such an end have their source in the power of the State never surrendered, of caring for the public safety of all within its jurisdiction; and the validity under the Constitution of the United States of such statutes is not to be questioned in a federal court, unless they are clearly inconsistent with some power granted to the general government or with some right secured by that instrument or unless they are purely arbitrary in their nature.
>
> "The statute here involved is not in any proper sense a regulation of Interstate Commerce, nor does it deny the equal protection of the laws. Upon its face it must be taken as not directed against Interstate Commerce, but as having been enacted in aid, not in ob-

> struction, of such commerce, and for the protection of those engaged in such commerce. * * * Undoubtedly Congress, in its discretion, *may take entire charge of the whole subject of the equipment* of interstate cars, and establish such regulations as are necessary and proper for the protection of those engaged in Interstate Commerce. But it has not done so in respect of the number of employees, to whom may be committed *the actual management* of Interstate *trains* of any kind. *It has not established any regulations on that subject,* and, until it does, the statutes of the State, not, in their nature, arbitrary, and which really relate to the rights and duties of all within the jurisdiction, must control. This principle has been firmly established, and is a most wholesome one under our systems of government, federal and state."

Congress, in the Safety Appliance Acts, has not taken "entire charge of the whole subject of the equipment of Interstate cars," or of "the actual management of Interstate trains" as stated by Mr. Justice Harlan, and there is nothing in the provisions of said acts, or in the administrative regulations made under the authority thereof, which is intended to preclude or which does preclude, the several States in the exercise of their police power from regulating, as do the provisions of Section 7 of the said Pennsylvania Act, the subject of "the actual management of" "trains" for "the safety of multitudes of people committed to the care" of the railroad operating under the State franchises. (PENNSYLVANIA RAILROAD COMPANY *vs.* EWING, 241 Pa. 581.)

"It is not too much to say that the State was *under an obligation* to establish such regulations as were necessary or reasonable for the safety of all engaged in business or domiciled within its limits. Beyond doubt, passengers on interstate carriers while within Arkansas are as fully entitled to the benefits of valid local laws enacted for the public

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safety, as are citizens of the State." (CHICAGO RAILWAY COMPANY *vs.* ARKANSAS, 219 U. S. 453.)

When the claim is made that Congress, in virtue of some supreme power, delegated to it, by the Federal Constitution, has, by a given enactment, precluded the states from exercising their police powers for such a purpose, or has superseded a State enactment already made, in the exercise of such power, or in the discharge of such a duty, *it must plainly appear,* from the Federal enactment in question, *that it was the intention of Congress so to do.* In such case, the question in last analysis resolves itself into one of the *Congressional intent.* If such intent is not *clearly manifested,* the general principle at the basis of the decisions cited by the plaintiff in error will not suffice to strike down the State law.

Therefore, it is that where, as in the case at bar, the Federal laws and regulations which are relied upon as having regulated the "particular subject" of the State law, to the exclusion of the State authority, have to do primarily, not with the "particular subject" of the State law, but with an essentially different subject, and where Congress "has seen fit to circumscribe its regulations and to occupy a limited field" the intent necessary to supersede the State authority is not shown.

Of this there is abundant illustration in the decisions of SAVAGE *vs.* JONES, 225 U. S. 501; ATLANTIC LINE *vs.* GEORGIA, 234 U. S. 280; MISSOURI ETC. RAILWAY COMPANY *vs.* HABER, 169 U. S. 613; REID *vs.* COLORADO, 187 U. S. 137; ASBELL *vs.* KANSAS, 209 U. S. 251, and like cases.

In SAVAGE *vs.* JONES, 225 U. S. 501, it was held that the State of Indiana was not precluded from enacting Ind. Acts 1917, Chap. 206, prohibiting sales of concentrated feeding stuffs in the original packages, unless there be compliance with its requirements as to inspection, analysis, and the disclosure of the ingredients, etc., by reason of the enactment by Congress of the Food and Drugs Act of June 30th, 1906 (34 Stat. L. 768, Chap. 3915 U. S. Comp.

Stat. Supp. 1911 P. L. 1354), for the prevention of adulteration and misbranding of foods and drugs.

With respect to the Federal enactment, the Court said, by Mr. Justice Hughes, that *"it has not included that at which the Indiana statute aims.* Can it be said that Congress, nevertheless, has denied to the State, with respect to the feeding stuffs coming from another State and sold in the original packages, the power the State otherwise would have to prevent imposition upon the public by making a reasonable and non-discriminatory provision for the disclosure of ingredients and for inspection and analysis? If there be such denial it is not to be found in any express declaration to that effect. Undoubtedly Congress, by virtue of its paramount authority over interstate commerce, might have said that such goods should be free from the incidental effect of a State law enacted for these purposes. But it did not so declare. * * *

"Is then a denial to the State of the exercise of its power for the purposes in question *necessarily implied* in the Federal statute? For when the question is whether a Federal Act overrides a State law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. *If* the *purpose* of the Act *cannot otherwise be accomplished* —if its *operation* within its chosen field else must be *frustrated* and its provisions be refused their natural effect—the State law must yield to the regulation of Congress within the sphere of its delegated power. * * *

"But *the intent to supersede* the exercise by the State of its police power as to matters not covered by the Federal legislation is *not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulations and to occupy a limited field.* In other words, such *intent* is *not* to be *implied unless* the Act of Congress, fairly interpreted, is in *actual conflict* with the law of the State. This principle has had abundant illustration."

(Italics ours.)

In the course of the opinion in SAVAGE *vs.* JONES, *supra*, Mr. Justice Hughes reviews the decisions of the Court, which are also of controlling authority in the case at bar, as follows:—

> "In REID *vs.* COLORADO, 187 U. S. 137, the question arose under a statute of Colorado which had been passed to prevent the introduction into the State of diseased animals. The statute made it a misdemeanor for anyone to bring into the State between April 1 and November 1 any cattle or horses from a State, Territory or county south of the thirty-sixth parallel of north latitude, unless they had been held at some place north of that parallel at least ninety days prior to importation, or unless the owner or person in charge should procure from the State Veterinary Sanitary Board a certificate, or bill of health, to the effect that the cattle or horses were free from all infectious or contagious diseases, and had not been exposed thereto at any time within the preceding ninety days. The expense of any inspection in connection therewith was to be paid by the owner.
>
> "The plaintiff in error had been convicted of bringing cattle into the State in violation of the statute. There was no proof in the case that the particular cattle had any infectious or contagious diseases, but it did appear that they were brought from Texas, south of the thirty-sixth parallel, without being held or inspected, as the statute required. Its provisions were ignored altogether as invalid legislation. When the plaintiff in error refused assent to the State inspection, he showed to the authorities a certificate signed by an assistant inspector of the Federal Bureau of Animal Industry, who certified that he had carefully inspected the cattle in Texas and found them free from communicable disease. It was insisted that the statute of Colorado was in conflict with the animal industry Act of Congress, but the ***Court sustained the State law*** for the reason that, ***although the two***

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statutes related to the same general subject they did *not cover the same ground* and were *not inconsistent with each other.*

"The *Court* thus *emphasized* the general principle involved (*supra*, page 148):

" '*It should never be held that Congress intends to supersede* or by its legislation suspend the exercise of the *police powers of the State*, even when it may do so, *unless its purpose to affect that result is clearly manifested.* This Court has said—and the principle has been often reaffirmed—that "*in the application of this principle of supremacy* of an Act of Congress in a case where the State law is but the exercise of a reserved power, *the repugnance or conflict should be direct and positive*, so that the two Acts could not be reconciled or consistently stand together." And in the course of its review of the subjects embraced in the Federal legislation, the Court said:

" 'Still another subject covered by the Act is the driving on foot or transporting from one State or Territory into another State or Territory, or from any State into the District of Columbia, or from the District into any State, of any livestock *known* to be affected with any contagious, infectious or communicable disease. *But this provision does not cover the entire subject of the transporting or shipping of diseased livestock from one State to another.* The owner of such stock, when bringing them into another State, may not know them to be diseased; but they may, in fact, be diseased, or the circumstances may be such as fairly to authorize the State into which they are about to be brought to take such precautionary measures as will reasonably guard its own domestic animals against danger from contagious, infectious, or communicable diseases. *The Act of Congress left the State free to cover that field by such regulations* as it

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deemed appropriate, and *which only incidentally affected the freedom of interstate commerce.*'

"'Our conclusion is that the statute of Colorado, as here involved, *does not cover the same ground* as the Act of Congress, and therefore is *not inconsistent* with that Act; and its constitutionality is not to be questioned unless it be in violation of the Constitution of the United States, independently of any legislation by Congress.'

"In ASBELL *vs.* KANSAS, 209 U. S. 251, the plaintiff in error had been convicted under a statute of the State of Kansas which made it a misdemeanor to transport cattle into the State from any point south of the south line of the State, except for immediate slaughter, without having first caused them to be inspected and passed as healthy by the proper State officials, or by the bureau of animal industry of the Interior Department of the United States. The Court held that the statute was a valid exercise of the power of the State, unless it were in conflict with the Act of Congress. It appeared that since the decision in REID *vs.* COLORADO, 187 U. S. 137, Congress had provided that where an inspector of the bureau of animal industry had issued a certificate that he had inspected livestock and found them free from communicable disease, they should be transported into any state or territory without further inspection or the exaction of fees of any kind, except such as might be required by the Secretary of Agriculture. But as the law of Kansas recognized the Federal certificate, a conflict with the Act of Congress was avoided, and hence the conviction under the State law was sustained.

"Applying these established principles to the present case, no ground appears for denying validity to the statute of Indiana. That State has determined that it is necessary, in order to secure proper protection from deception, that purchasers of the described feeding

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stuffs should be suitably informed of what they are buying, and has made reasonable provision for disclosure of ingredients by certificate and label and for inspection and analysis. The requirements, the enforcement of which the bill seeks to enjoin, are not in any way in conflict with the provisions of the Federal Act."

In MISSOURI K. & T. R. Co. *vs.* HARRIS, 234 U. S. 412, the Supreme Court, applying the principle of the decisions in SAVAGE *vs.* JONES, *supra*, REID *vs.* COLORADO, *supra*, and like cases, upheld the statute of the State of Texas (Texas Laws 1909, page 93), as against the contention that Congress, by the Carmack Amendment of June 29th, 1906, exercised its paramount authority, so as to supersede the State law. Mr. Justice Pitney, delivering the opinion of the Court, after referring to CHICAGO &C. RAILWAY COMPANY *vs.* HARDWICK ELEVATOR COMPANY, 226 U. S. 426 (cited by the present plaintiff in error), said:—

> "These cases recognize the established rule that a State law, enacted under any of the reserved powers—*especially if under the police power—is not be set aside* as inconsistent with an Act of Congress, *unless there is actual repugnancy*, or *unless Congress has at least manifested a purpose to exercise its paramount authority over the subject.* The rule rests upon the *fundamental* grounds that *should not be disregarded.*"

The language of Mr. Justice Harlan, in REID *vs.* COLORADO, *supra*, and of Mr. Justice Hughes in SAVAGE *vs.* JONES, *supra*, were then quoted as of controlling significance.

Applying the "established rule" annunciated in the cases last referred to—the rule which "rests upon fundamental grounds that should not be disregarded,"—it is apparent that the Federal enactments and regulations (safety appliance acts, postal laws and regulations of Interstate Com-

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merce Commission and of the Postmaster General) which are here invoked by the plaintiff in error, do not regulate "the particular subject" (PRIGG *vs.* PENNSYLVANIA, *supra*), which is the subject of the regulations prescribed by Section 7 of the Pennsylvania Act of 1911, *i. e.*, the *proper management* or operation or *proper manning*, in operation, of railroad trains, *qua trains*. The Postal Laws and regulations had to do with the type of mail *cars* for the transmission of the mails. The Safety Appliance Acts, of Congress, and the regulations of Interstate Commerce Commission, promulgated under the authority of those acts, *did not undertake to regulate the matter of rear end platforms* on the rear end of railroad trains, composed of United States mail or express cars, which cars are built (in compliance with the Federal laws and regulations) without such rear end platform, and one of which cars, but for such State police regulations, may be placed by the railroad company, at the rear end of the train, so that the train may be operated and manned without this rear end platform requirement deemed necessary, under the legislation of the State, for its proper manning and operation for purposes of public safety.

It is apparent that "although the two statutes *related* to the same *general subject*" *i. e.*, promotion of the safety of travelers and of employees upon railroads, yet they did "not cover the same ground," and are "not inconsistent with each other." (REID *vs.* COLORADO, *supra;* SAVAGE *vs.* JONES, *supra.*)

The Safety Appliance Acts of Congress covered certain *safety appliances* with which all railroad *cars* must be equipped, for the purpose of the promotion of such safety, but this is far from taking "entire charge of the whole subject of the equipment of Interstate cars" or "the actual management of Interstate trains." (CHICAGO &C. RAILWAY COMPANY *vs.* ARKANSAS, 219 U. S. 453, *supra*), to the exclusion of the police powers of the States.

The intent to supersede the exercise by the State of its police power, as to these matters, *the actual management of*

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trains, the *proper manning of trains*, as with a *front end* Locomotive *Headlight* of certain character (ATLANTIC C. L. R. Co. *vs.* GEORGIA, 234 U. S. 280), or with a *rear end platform* of certain character, as prescribed by the Pennsylvania Act "is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation," with respect to Safety *Appliances* on railroad *cars* as such (SAVAGE *vs.* JONES, *supra*).

Even as to such cars, the contention of the plaintiff in error, made in the effort to strike down the law of the State on the said different subject matter, seems to proceed largely upon a mistaken assumption that Congress, in regulating, as it has done, Safety *appliances* on *cars*, has regulated *rear end platforms*, and that there is, therefrom, to be inferred the intent on the part of Congress, that there shall be no legislation by the States in any connection, or for any purpose whatever.

As a matter of fact, however, the plaintiff in error *does not show any federal regulation at all as to such platforms*, even on cars as such, as distinguished from the subject of the *manning* and operation of a *train* carrying United States mail or express cars, which *have no platforms* at the end of the cars, but merely "end sills,"—the cars in railroad parlance being known as "*stub end*" cars.

Plaintiff in error in attempting to show that Congress regulated rear end *platforms* and their dimensions, says (brief of plaintiff in error, page 11) that:—

> "It will be noted that the Interstate Commerce Commission, by its order of March 13th, 1911, issued in pursuance of the authority conferred upon it by the Act of April 14th, 1910, supplementing 'An Act to promote the safety of employees * * * upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers, &c., &c., *had given approval to the use* 'of cars with platform *end sills* six (6) or more inches in

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width' (Record, pages 30, 51), while the width of the *end sills or platforms* of the cars here involved was 'ten (10) inches in the clear' (Record, page 29,), being the adopted width dimension of the Pennsylvania Railroad's 'standard short vestibule' called for by Section 28 of the 'Specification for the Construction of Steel Full Postal Cars' " (Record, pages 124, 138, 29).

Again, (brief of plaintiff in error, page 13), with reference to mail cars, "the Federal prescriptions as to character of their construction and their equipment with safety appliances, *including the dimensions of their rear platforms,*" &c., are referred to, but "the Federal prescription" as to "the dimensions" of such "rear platforms" are not quoted, nor is the place in the Record specified, where they are to be found.

Plaintiff in error refers also (brief of plaintiff in error, page 3) to Sections 28 and 32, of the Post Office Department specifications for the construction of Steel Full Postal Cars, approved March 28th, 1912, as revised March 17th, 1915, which require:—

"SECTION 28. Vestibules.

"Postal cars are to be equipped with the railway company's standard short *vestibules*" * * *.

"SECTION 32. Steps, Handholds, etc.

"The details of the *steps, handholds,* and *signal brackets* to be in accordance with the United States safety appliance and M. C. B. requirements and the practice of the railroad for which the cars are built. Side steps to be full width of door opening where possible. Handholds to be applied to each side door post. See R. M. S. drawings for detail step construction." (Record, pages 83, 138, 139.)

The specifications of the Post Office Department are again referred to (brief of plaintiff in error, pages 11, 12) viz.:—

(Italics ours.)

"The details of the steps, handholds, and signal brackets, to be in accordance with United States safety-appliance and M. C. B. (Master Car Builders') requirements, and the practice of the railroad for which the cars are built" and compel all "Postal Cars * * * to be equipped with the railway company's standard short *vestibule,* preferably with outside buffer springs, and with *diaphragms when needed for communication between cars.*" (Section 28, Record 28.)

That the statement that Congress has regulated *rear end platforms* or their dimensions rests in nothing more than *mere assertion* is shown from the syllogism appearing in said brief (page 12) as follows:—

"As all postal cars must be equipped 'with the Railway Company's standard short vestibule,' and as the *'platform' is* nothing but the *floor of the vestibule, it is certain that if the vestibule is 'short' the platform or floor thereof must likewise be 'short.'*

"In the instant case, the company's standard short vestibule called for a platform end sill '10 inches in the clear' at the rear'" (Record, page 29), "while, 'the United States Safety Appliance standards,' Interstate Commerce Commission order, March 13th, 1911, *permitted* 'platform end sills six inches in width.'" (Record, page 30.)

It is evident, however, that Congress did not undertake, by way of regulation, to say anything whatever about rear *end platforms* of cars. That this appears from the testimony offered by the plaintiff in error before the Public Service Commission of Pennsylvania, as well as from the Federal regulations themselves, also offered thereat, is shown by the record.

Thus, before the Commission, after deliberation, finally determined that the scope of the Federal regulations and

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their legal effect as related to the question of constitutionality of the State Act was a judicial question beyond the Commission's power to pass upon, the Commission earnestly endeavored to get counsel for the plaintiff in error to point out what provisions of the Federal regulations, offered by it, in fact regulated this matter of *platforms*. The plaintiff in error *failed to show any regulations as to platforms*. On the contrary, counsel for the plaintiff in error in the proceedings before the Commission stated that "platform cars" *were no longer in use;* thus (Record, page 16) it appears:—

> "COMMISSIONER PENNYPACKER:—Now does the Act of Congress provide anything concerning the question of *platforms* in the rear of the car?
>
> "MR. LLOYD:—Yes, sir. The Act of Congress provides that we shall furnish a car with a *stub end, similar to the car in question;* and there is a reason for that, which I may just as well explain now, although I have witnesses and will call them later. Many years ago when the old cars were in use, it was found that the platforms on these mail cars were very difficult for the mail clerks to operate. They had to drag the mail from the storage car into the post office car, or full mail car; and here was also danger that evil disposed persons would get on to the platform and come into the mail cars. As the result of that, the post office department *objected to our furnishing the platform cars*, and at first we boarded up the platform so that people could not get on them. Finally steel cars were substituted, and *that is the present car*, which is furnished under the specifications provided."

It was precisely because the United States mail cars, under the Federal specifications were *"stub-end"* cars, as thus stated and *not cars with rear end platforms*, that Section 7

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of the Pennsylvania Act provided that a *train* composed of cars of that character, either "United States mail or express cars" should be provided *at its rear end* with a *rear end platform*, for the purpose of the *proper manning* of that kind of a *train*.

It will be noted, however, that it was not required that the rear or last car of such a train had to be either a mail car or an express car, so as to necessitate a different construction of such "stub-end" mail cars or express cars.

The location of such mail cars and express cars in such a train was in no way interfered with by the State enactment, further than that, for the purposes having to do with the *proper manning* of the train, referred to by the Supreme Court of the State in PENNSYLVANIA RAILROAD COMPANY *vs.* EWING, 204 Pa. 581, 592, 593, it was determined by the Legislature, in the provisions of said section, that a *train* carrying cars of such "stub end" character should be equipped with a *rear end "platform* thirty (30) inches in width."

Again (Record, page 19) Commissioner Pennypacker, pursuing the same inquiry, asked:—

> "What does the Act say *about platforms*, if anything?

To which Mr. Lloyd, counsel for the plaintiff in error, replied, not that the Act or the regulations said anything about *platforms*, but that:—

> "It provides that there shall be *end sills* and all cars must be equipped with secure *sill steps*."

It appears at this place in the record, as elsewhere throughout, that the very Federal regulations to which Mr. Lloyd referred in connection with "*end sills* were promulgated under the heading of "Passenger train cars *without end platforms*," and that under the heading of "end handholds" and "manner of application," the regulations pro-

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vided that "when marker sockets or brackets are located *so that they cannot be conveniently reached from platforms,* suitable steps and handholds should be provided for men to reach such sockets or brackets" (Record, pages 19, 26).

When Mr. Kleine, expert witness for plaintiff in error, was called, and examined, he testified that "the vestibule" on a mail car, the floor of which vestibule is referred to in the brief of plaintiff in error (pages 3-12) as being the "platform," was "not a platform" (Record, page 29).

Thus this witness, under cross examination, testified:—

> "Q. Well read Section 28.
>
> "A. Postal cars are to be equipped with the railway company's standard short vestibule, preferably with outside buffer springs, and with diaphragms when needed for communicating between cars.
>
> "Q. *A vestibule is not a platform, is it?*
>
> "A. *No, sir,* but a short vestibule car ——
>
> "Q. That is right. Now, the vestibule extends out over the 10-inch sill, does it not?
>
> "A. The vestibule does, yes sir."

* * * * * * *

(Record, page 30):—

> "Q. Where? Turn to the specifications that specify the use of the word 'platform.'
>
> "A. On page 28, of the order of the Interstate Commerce Commission, of March 13, 1911, it refers to it, under 'End-Handrails: (on cars with projecting end-sills.'
>
> "Q. Yes.
>
> "A. But you are actually referred back to page 27.
>
> "Q. Now, stop at 'end sill.' So your end sill is this 10-inch platform, as equipped, is it?
>
> "A. I beg your pardon, I am not quite clear. I want to go to another reference, for that actually goes back to page 7.

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"Q. I cannot refer to it. If you can, turn to it.

"A. Page 7, of the United States safety appliance standards, under 'Horizontal end-handholds.' It says 'On each end of cars with platform end-sills six (6) inches or more in width.

"Q. Now, that refers to the platform end sill alone, does it not?

"A. As the platform end sill.

"Q. And does it speak of the platform in the center, or any way excepting as a platform end sill?

"A. A platform end sill, that is correct, yes, sir."

On page 7 of the Order of the Interstate Commerce Commission, March 13th, 1911 (Record, page 51), it will be found that in the regulation relied upon by plaintiff in error as being a regulation of rear end platforms, all that there appears is given under the entirely different heading of "horizontal end handholds," with which alone the regulations had to do, and all that is said is, that, "on each end of cars with platforms, end sills, six or more inches in width, measured from end post or siding, and extending entirely across end of car, there shall be one additional end handhold," &c.

Nowhere in any of the regulations referred to will it be found that Congress regulated end platforms or the dimensions of end platforms. And so much of the argument of the plaintiff in error, which rests upon the assertion that end platforms were regulated either directly or indirectly by Congress, falls to the ground.

As above pointed out, however, the whole scheme and scope of the Federal enactments and regulations upon which plaintiff in error depends is limited to the subject matter of the construction and safety appliance equipment of *cars, qua cars,* as distinguished from the precise subject matter of the regulations contained in Section 7 of the State enactment, which have to do with the different subject of the *make-up* of *trains* and their *proper manning* in operation, in providing that the rear *end of a train,* composed of the

"stub end" United States mail cars or express cars, shall be equipped with a "platform of 30 inches in width." Of necessity, *the rear end of such a train would presumably be a car of some sort,* hence the phraseology "the rear end of the rear car so equipped with * * * platform of 30 inches in width," in the wording of the State statute.

The mere fact, however, that in providing for the rear platform at the rear end of the train, the phrase "rear car" is thus employed to express the legislative purpose, *does not show* that the said *regulation* is in substance or legal effect a regulation of the construction and equipment of *cars* when it is so clearly apparent from the whole text of the said Act that what is dealt with thereby is the *proper manning* and *operation* of *trains* for purposes of the local public *safety.*

In a word, if we apply the test, said by plaintiff in error to be the proper criterion in the case, viz., "whether the State and Federal laws cover the same field is to be determined by considerations of substance * * * and not by mere differences in entitlement and phraseology" (brief of plaintiff in error, pages 20, 21), it will be perceived that the Federal laws and regulations invoked by plaintiff in error to supersede the said police regulations of the State of Pennsylvania, are *not regulations of* the *"particular subject"* of the exertion of the Federal authority.

There is no "coincidence," no "conflict," no "inconsistency," and no "opposition" to the supremacy of the Federal power as exerted. The purposes of the Federal laws and regulations may be given full effect, in accordance with the Congressional intent and their operation within their chosen field is in no wise frustrated (Savage *vs.* Jones, *supra*).

The settled principle, "often reaffirmed," is that, "in the application of the principle of supremacy of an Act of Congress in a case where the State law is but the exercise of a reserved power" (REID *vs.* COLORADO, 187 U. S. 137)—"especially the police power" (MISSOURI, ETC., R. R. CO. *vs.* HARRIS, 234 U. S. 412) "the repugnance or conflict should be direct and positive, so that the two Acts cannot be reconciled or consistently stand together" (REID *vs.* COLORADO, *supra*). Congress *has not* "manifested a purpose to exer-

cise its paramount power over the subject" (Missouri Railroad Co. *vs.* Harris, *supra*), and it *"should never be held* that *Congress intends* to *supersede* or by its legislation *suspend* the exercise of the *police powers* of the States, even when it may do so, *unless its purpose to effect that result is clearly manifested."*

The case here is like ATLANTIC COAST LINE RAILROAD Co. *vs.* STATE OF GEORGIA, 234 U. S. 280, wherein the Locomotive Head Light Act of the State of Georgia (Georgia Public Laws, 1908, pages 50, 51), was involved and the same argument was made that Congress, by the Safety Appliance Acts and subordinate administrative regulations had completely regulated the safety appliance equipment on trains to the exclusion of the police power of the State to enact and enforce the State statute.

The Georgia statute required railway locomotives running on the main line to be equipped with electric headlights which shall consume not less than 30 watts at the arc, with reflectors not less than 23 inches in diameter. As against this State enactment, reference was made to the Act of March 2d, 1893, Chapter 196 (27 Stat. at L. 531, U. S. Comp. Stat. 1901, page 3174), relating to power-driving wheel brakes for locomotives, grab irons, automatic couplers and height of draw-bars; to the Act of March 2d, 1903, Chap. 976 (32 Stat. at L. 943, U. S. Comp. Stat. Supp, 1911, page 1314), * * * authorizing the Interstate Commerce Commission to keep informed regarding compliance with the Safety Appliance Act, and to investigate and report on the need of any appliances or systems intended to promote the safety of railway operations; to the Act of May 30th, 1908, Chap. 225 (35 Stat. at L. 476 U. S. Comp. Stat. Supp., 1911, page 1326), relating to locomotive ash pans; to the Act of April 14th, 1910, Chap. 160 (36 Stat. at L. 298, U. S. Comp. Stat. Supp., 1911, page 1327), relating to sill steps, hand brakes, ladders, running boards and hand holds, and providing that the Interstate Commerce Commission should, after hearing, designate the number, dimensions, location and manner of application of these appliances, and of those required by the Act of 1893 to the detailed regulations pre-

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scribed by the Commission, on March 13th, 1911, pursuant to this authority; to the Act of May 6th, 1910, Chap. 208 (36 Stat. at L. 350, U. S. Comp. Stat. Supp., 1911, page 1329), requiring the Commission to investigate accidents and make report as to their causes, with such recommendations as they may deem proper; and to the Act of February 17th, 1911, Chap. 103 (36 Stat. at L. 913, U. S. Comp. Stat. Supp., 1911, page 1333), relating to locomotive boilers."

The Court in holding that the congressional enactments and Federal regulations made pursuant thereto, did not supersede the said statute of Georgia, said in the opinion by Mr. Justice Hughes, that "it has been the law since the beginning of the railroad transportation," that "in the absence of legislation by Congress, the States are not denied th exercise of their power to secure safety in the physical operation of railroad trains within their territory, even though such trains are used in interstate commerce." The opinion proceeded as follows:—

> "We may repeat what was said in SMITH *vs.* ALABAMA, 124 U. S. 465: 'It is to be remembered that railroads are not natural highways of trade and commerce. * * * The places where they may be located, and the plans according to which they must be constructed, are prescribed by the legislation of the State. Their operation requires the use of instruments and agencies attended with special *risks* and *dangers*, the *proper management* of which involves peculiar knowledge, training, skill and care. The safety of the public in person and property demand the use of specific guards and precautions. * * * The rules prescribed for their construction and for their *management* and *operation*, designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not *per se* regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed

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will of Congress *exerted on the same subject*, that they can be required to give way to the supreme authority of the Constitution." (Other cases cited to the same effect.)

* * * * * * *

"If there is a conflict in such local regulations, by which interstate commerce may be inconvenienced—if there appears to be need of standardization of safety appliances, and of providing rules of operation which will govern the entire interstate road, irrespective of State boundaries—there is a simple remedy; and it cannot be assumed that it will not be readily applied, if there be real occasion for it. That remedy does not rest in a denial to the State, in the absence of conflicting federal action, of its power to protect life and property within its borders, but it does lie in the exercise of the paramount authority of Congress, in its control of interstate commerce, to establish such regulations as, in its judgment, may be deemed appropriate and sufficient. Congress, when it pleases, may give the rule and make the standard to be observed on the interstate highway."

But in answer to the contention that Congress in the above cited acts had so acted in the that instance, so as to supersede the police power of the State, the Court said:—

"It is manifest that none of these acts provides *regulations* for *locomotive head lights*. Attention is also called to the investigations conducted by what is known as the 'block signal and train control board' (organized by the Commission) and the reports of that board with respect to sundry devices and appliances, including headlights. It *does not appear*, however, either that Congress has acted, or that the Commission, under the authority of Congress, *has established* any *regulation so far as headlights are concerned*. As to these, the situation has not been altered by any

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exertion of Federal power, and the case stands as it has always stood, without regulation, unless it be supplied by local authority. The most that can be said is that inquiries have been made, but that *Congress has not yet decided to establish regulations, either directly or through its subordinate body, as to the appliance in question.* The *intent* to supersede the exercise of the State's police power with respect to this subject *cannot be inferred* from the *restricted action* which thus far has been taken. Missouri P. R. Company *vs.* Larabee Flour Mills Company, 211 U. S. 612, Savage *vs.* Jones, 225 U. S. 501."

As Congress in that case had *not* "established any regulations so far as *headlights* are concerned" the statute of the State of Georgia providing for such *headlights* of certain character and dimensions for the locomotive, at the *front end* of the *train,* was not superseded. So in the case at bar, Section 7 of the Pennsylvania statute which provides for a *platform* of 30 inches in width at the *rear end of the train,* for the similar purpose of promoting the proper manning and operation thereof, for purposes of public safety, has not been superseded. None of the Acts of Congress, or Federal regulations, relied upon by the plaintiff in error are regulations of that subject and the local regulations of the State thereon stand as valid under the Federal Constitution, conformably to the principle applied under substantially the identical circumstances in the case last cited.

See to the same effect VANDALIA RAILROAD COMPANY *vs.* PUBLIC SERVICE COMMISSION, 242 U. S. 255, 258, 259.

As to Rule 10 of the Rules of Practice.

Plaintiff in error invokes as against the defendants in error, Rule 19 of the Rules of Practice, providing in paragraph 9 thereof, that, "if the defendant in error, or appellee, shall have caused unnecessary parts of the record

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to be printed, such order as to costs shall be made as the Court shall think proper."

It is averred that the plaintiff in error, "filed its designation of parts of the record to be omitted in printing, with proof of service of a copy of such designation upon opponents (Record, pages 205-208)," and that, "the parts so designated constitute in excess 70 printed pages of the printed transcript now before the Court, besides the reproduction of photographs, and endorsements thereon, &c.," and that, "notwithstanding the matter so designated for omission *could not by even the widest stretch of imagination be deemed relevant* in any aspect of the point relied upon for reversal by plaintiff in error, nevertheless counsel for defendants in error, apparently after deliberation, on January 7th, 1918, directed 'the full and entire original transcript of record on file in the cause, including all and every the parts thereof designated or specified as and for omission in printing by the plaintiff in error' to be printed."

Counsel for defendants in error had no intent to cause any unnecessary or irrelevant parts of the record to be printed, and acted in entire good faith in the matter.

The record shows (Record, page 209) that counsel for defendants in error distinctly stated, "that no document or copy of any document apppearing in said original transcript of record on file, need be printed more than once in the reproduction of said record in printing."

Notwithstanding this, plaintiffs in error have printed several of such *documents* or copies of documents, more than once. They have also printed a *brief* filed by the Pennsylvania Railroad Company, when appellant in the Superior Court of the State of Pennsylvania, "in support of a rule to show cause why the appeal shall not act as a supersedeas." (Record, page 185.)

Defendants in error had no intent of directing that such brief, which of course formed no proper part of the record of said Superior Court, and which should not have been returned by the clerk of the said Court as part of

(Italics ours.)

the record, to be printed by plaintiffs in error. The fact that it was so improperly returned by the clerk of the Superior Court of Pennsylvania as part of the record, entirely escaped the attention of counsel for defendants in error.

The other parts of the record designated by plaintiff in error for omission in printing and which they say, "could not by even the widest stretch of imagination be deemed relevant in any aspect of the point relied upon for reversal," constitute *evidence* that was *introduced* in the proceedings before the Public Service Commission of Pennsylvania, *by plaintiff in error itself*, as being relevant to this very point relied upon for reversal by plaintiff in error.

We agree with the latest statement of counsel for plaintiff in error that it was not relevant in law, but it was deemed but fair by counsel for defendants in error that this documentary evidence, which was relied upon by them before the State Commission, and in the courts of the State, to be likewise contained in the printed record, especially since it demonstrated, from the standpoint of the defendants in error, that notwithstanding the detailed character of such evidence introduced by the plaintiff in error to show that Congress had regulated the particular subject matter to the exclusion of the State authority, yet Congress had in fact not done so.

All that counsel for defendants in error did in this regard was done in absolute good faith as well to the Court as to their clients and with no desire to impose any unfair or unnecessary inconvenience or costs upon plaintiff in error.

This matter is respectfully submitted to the Court for such action as it may think proper.

Respectfully submitted,

GEORGE F. SNYDER,
Attorney for Defendants in Error.

BERNE H. EVANS,
Of Counsel for the Public Service Commission of Pennsylvania,

WILLIAM N. TRINKLE,
Of Counsel for Order of Railway Conductors, and Brotherhood of Railroad Trainmen, Defendants in error.

APPENDIX.

An Act

To promote the safety of travelers and employees upon railroads, by compelling common carriers by railroad to properly man their trains.

Section 1. *Be it enacted, &c.*, That it shall be unlawful for any railroad company, its officers or agents, officers of the court, receiver, or any person or persons doing business in this Commonwealth, to run or operate over its road, or any part of its road, or permit to be run or operated over its road or any part of its road any freight train, consisting of more than thirty (30) freight or other cars, exclusive of caboose and locomotive, with a train crew consisting of less than six (6) persons, to wit, one engineman, one fireman, one conductor, one flagman and two brakemen.

Section 2. That it shall be unlawful for any railroad company, its officers or agents, officers of the court, receiver or any person or persons doing business in this Commonwealth, to run or operate over its road, or any part of its road, or permit to run or operate over its road or any part of its road any freight train consisting of less than thirty (30) freight or other cars, exclusive of caboose and locomotive, with a train crew consisting of less than five (5) persons, to wit, one engineman, one fireman, one conductor, one flagman and one brakeman.

Section 3. That it shall be unlawful for any railroad company, its officers or agents, officers of the court, receiver, or any person or persons doing business in this Commonwealth, to run or operate over its road, or any part of its road, or permit to be run or operated over its road, or any part of its road, any train carrying passengers, consisting of not more than three (3) passenger coaches and one baggage car, with a train crew consisting of not less than five (5) persons, to wit, one engineman, one fireman, one con-

ductor, one baggageman and one flagman. This not to inclue the train porters or Pullman employees.

SECTION 4. That nothing in this act shall be so construed as to make it apply to any train carrying passengers, consisting of three or less cars; Provided, that nothing in this act shall be so construed to prevent the increasing of the number of men upon trains, as set forth herein.

SECTION 5. That it shall be unlawful for any railroad company, its officers or agents, officers of the court, receiver, or any person or persons doing business in this Commonwealth, to run or operate over its road or any part of its road, or permit to be run or operated over its road or any part of its road, any train carrying passengers, consisting of four (4) or more passenger coaches and one baggage car, with a crew of less than six (6) men, to wit, one engineman, one fireman, one conductor, one baggageman, one brakeman, one flagman; this not to include the train porters or Pullman employees.

SECTION 6. That it shall be unlawful for any railroad company, its officers or agents, officers of the court, receiver, or any person or persons doing business in this Commonwealth, to run or operate over its road, or any part of its road, or permit to be run or operated over its road, or any part of its road, any train consisting of four or more passenger, express, or mail cars, with a crew consisting of less than five (5) men, to wit, one engineman, one fireman, one conductor, one brakeman, one flagman; this not to include the train porters or Pullman employees.

SECTION 7. That it shall be unlawful for any railroad company, its officers or agents, officers of the court, receiver or any person or persons doing business in this Commonwealth, to run or operate over its road, or part of its road, or permit to be run or operated over its road or any part of its road, any train consisting of United States mail, or

express cars, without the rear end of the rear car so equipped with exit free from obstruction, platform of thirty inches in width, guardrails and steps, also heating appliances to maintain a temperature of sixty five degrees.

SECTION 8. Any railroad company, its officers or agents, officers of the court, receiver, or any person or persons operating a railroad, violating any of the provisions of this act, shall be guilty of a misdemeanor, and liable to a penalty of one hundred ($100) dollars for each and every such violation, to be recovered with costs as debts are now by law recoverable, by a suit in the name of the Commonwealth, for the use of the county, in which such violation takes place: Provided, however, That nothing in this act shall apply or relate to trains owned or operated by manufacturers, made up of hot metal ladles, ingots, slag or table trucks.

SECTION 9. It shall be the duty of the State Railroad Commission of the Commonwealth to enforce the provisions of this Act.

SECTION 10. All acts or parts of acts inconsistent herewith shall be and the same are hereby repealed; and this act shall be in force thirty (30) after its passage.

Approved—The 19th day of June A. D. 1911.

JOHN K. TENER.

PENNSYLVANIA RAILROAD COMPANY *v.* PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA ET AL.

ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

No. 53. Argued October 24, 1919.—Decided November 10, 1919.

A writ of error will lie to a judgment of the Superior Court of Pennsylvania upholding a law of the State against an objection based on the Federal Constitution, if the Supreme Court of the State refuses to allow an appeal. P. 568.

Want of power in a state commission to consider the constitutionality of a law which it seeks to enforce can not limit the right of a party affected to raise the question in the state courts. *Id.*

As applied to an interstate train terminated by a mail car, the law of Pennsylvania (Laws 1911, p. 1053, § 7), forbidding the operation

of any train consisting of United States mail, or express, cars, without the rear end of the rear car being equipped with a platform of thirty inches in width, with guard rails and steps, invades a subject of regulation fully occupied by Congress through the rules of the Postmaster General respecting the construction of mail cars and their equipment when used as end cars, and under the commerce clause, as is evinced by the Safety Appliance Act and the regulations of the Interstate Commerce Commission thereunder, particularly those permitting the employment of caboose cars, which are constantly used as end cars, without platforms. *Id.*

67 Pa. Super. Ct. Rep. 575, reversed.

THE case is stated in the opinion.

Mr. Frederic D. McKenney, with whom *Mr. John Spalding Flannery* was on the brief, for plaintiff in error.

Mr. William N. Trinkle, with whom *Mr. George F. Snyder* and *Mr. Berne H. Evans* were on the brief, for defendants in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This case was begun by a complaint to the Public Service Commission of Pennsylvania that the plaintiff in error, the Pennsylvania Railroad, ran a specified train the last car of which was not equipped at its rear end with a platform thirty inches in width, guard rails and steps, as required by a statute of Pennsylvania. Act of June 19, 1911, § 7. The train was moving in interstate commerce. The Railroad Company admitted the facts but contended that it was not bound by the statute because the rear car was a mail car constructed in accordance with the regulations of the Post Office Department, and because the Government of the United States had assumed control of the matter so far as to exclude such intermeddling on the part of a State. The Commission made an order that the Rail-

road Company should operate its train with the rear end of the rear car equipped as required by the state law. The Railroad Company appealed to the Superior Court, setting up that the order violated the commerce clause of the Constitution (Art. I, § 8), and that in view of the federal legislation and rules, including the order of the Interstate Commerce Commission dated March 13, 1911, and made under the Safety Appliance Act, and other matters referred to, the State Commission had no power to do what it did.

The Superior Court sustained the order holding itself bound by what it took to be the decision of the Supreme Court in *Pennsylvania R. R. Co.* v. *Ewing*, 241 Pa. St. 581, to the effect that nothing had been done by the United States inconsistent with the continued effect of the state law. An appeal to the Supreme Court was refused. On the strength of this it now is argued that the refusal must have been upon the ground that the Commission was a purely administrative body; that it had no judicial power to declare the statute unconstitutional; that therefore no question of the constitutionality of the act was before the Superior Court, and that this is implied because an appeal to the Supreme Court was a matter of right if the case had involved such a question. But whatever powers a State may deny to its commissions it cannot give them power to do what the laws of the United States forbid, whether they call their action administrative or judicial. The Superior Court treated the question as open. The Supreme Court merely denied an appeal upon a point that probably was thought to have been decided already by the Court.

We pass to the merits of the case. If all that had been done on behalf of the United States in the way of regulation had been to determine how mail cars should be built, and to exclude a thirty-inch platform, it might be said that the state law could be obeyed by putting a different

car at the end of the train. It would be a tax upon the railroad when the company wished to run a mail train wholly made up of mail cars, but it could be done and it is not necessary to say that the State could not require it. But when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them. *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446. *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604. *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147. In the present instance the rules for the construction of mail cars, admitted to be valid, not only exclude the wide platform but provide an equipment for them when used as end cars. The Safety Appliance Act with its careful requirements for the safety of the men was followed by most elaborate regulations issued by the Interstate Commerce Commission which include three large pages of prescriptions for "Caboose Cars without Platforms." Caboose cars constantly are used as end cars and these pages like the Post Office order as to mail cars recognize the lawfulness of an end car such as the Pennsylvania statute forbids.

The question whether Congress and its commissions acting under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude the State, must be answered by a judgment upon the particular case. The subject-matter in this instance is peculiarly one that calls for uniform law and in our opinion regulation by the paramount authority has gone so far that the statute of Pennsylvania cannot impose the additional obligation in issue here. The Interstate Commerce Commission is continually on the alert, and if the Pennsylvania law represents a real necessity, no doubt will take or recommend steps to meet the need.

Judgment reversed.

MR. JUSTICE CLARKE dissenting.

Of course I agree with the majority of the court that if the United States had taken possession of the field involved in this controversy, the State could not supplement or annul its requirements or regulations, and it is because it seems to me clear that it has done nothing of the kind that I dissent from the conclusion of the court.

The Interstate Commerce Commission has never assumed control over the manner in which trains shall be made up, or manned, or moved, so far as I know,—certainly there is nothing in the record in this case to indicate that it has done so.

The section of the state statute held invalid has to do, not with individual cars, but with high speed trains of cars in operation, and it does not prescribe what the construction of mail or express cars shall be, but only that the rear car of trains made up of mail or express cars shall be equipped with a platform as prescribed, with "exits free from obstruction." It may be a mail car, or an express car, or a passenger coach or a caboose,—the only requirement is that it shall have a platform with guard rail and steps.

For the reason that federal authority had not occupied the field, this court has upheld state laws prescribing the number of men who must be employed to operate trains, *Chicago, Rock Island & Pacific Ry. Co.* v. *Arkansas*, 219 U. S. 453, the manner in which the cars of passenger trains shall be heated, *New York, New Haven & Hartford R. R. Co.* v. *New York*, 165 U. S. 628, the kind of headlight which engines shall carry, *Atlantic Coast Line R. R. Co.* v. *Georgia*, 234 U. S. 280, and that trainmen shall be subject to state examination as to their qualifications, *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, Chattanooga & St. Louis Ry.* v. *Alabama*, 128 U. S. 96.

In this case the action of the court is rested chiefly on the single circumstance that the Interstate Commerce

Commission has prescribed requisites for "Caboose Cars without Platforms," and since caboose cars are constantly used as end cars, therefore it is concluded the Commission recognizes as lawful a type of end car which the state statute condemns.

If the construction prescribed for "Caboose Cars without Platforms" at all resembled or was even approximately the equivalent of the construction of express or mail cars in the respects essential to the safety and promptness of service on the rear end of fast trains, or if it appeared that such cabooses are or could be used on such trains, the inference might be justified, but the difference between the two is radical and fundamental. As thus: the illustrations in the record show that mail and express cars have only narrow stirrups and single handholds at the side doors and at their ends, and the ends are equipped with vestibule frames, which render access difficult and dangerous to the brake wheel and markers (signal lights and flags) and to the handholds and stirrups for mounting or alighting. But the requisites prescribed for a "Caboose without Platform" are, a curved and a straight handhold on opposite sides of each side door, and "Side-door Steps" under each door, with a minimum length of five feet, a minimum width of six inches, a minimum height of back-stop of three inches, and hung a maximum height of only twenty-four inches from the top of rail. Such handholds, with such a long, wide and low-hanging step give facilities for mounting or alighting from such a caboose, when in motion, comparable in safety to those of an end platform, and are obviously much better and safer than those on mail or express cars.

The importance of rear-end signals cannot be overstated, yet the construction of the ends of express and mail cars, as shown in the illustrations in the record, is such that such signals can be observed by trainmen with difficulty, when the train is moving, and can be put in place

or removed only with great risk of injury, especially in time of storm of wind or rain or when the precarious foothold on the narrow ledge of the slightly extended end sill is covered with ice or snow. Such danger is entirely obviated by use of the inexpensive platform prescribed by the state statute.

To this we must add that a caboose is used only on slowly moving freight trains, while the state act deals only with fast trains, which start so rapidly that mounting them is especially dangerous for men, who, in the discharge of duty, must usually be on the ground to the last moment, for observation and for signalling, and with whom a few moments in alighting, when the emergency signal is given, may mean the difference between safety and disaster to themselves and to passengers and property on such and other trains.

It was to furnish facilities to employees for prompt and reasonably safe mounting and alighting from these fast trains and for the discharge of other duties without excessive danger that the statute was enacted, and it seems to me, for the reasons stated, that permitting the use of cabooses without platforms does not cover the rear end requirements of fast express and mail trains, and that the court, in its decision, makes a misapplication of that permission.

It will excite surprise in many minds that the plaintiff railroad company does not make, as it is believed many carriers do make, such provision as this statute requires, or its equivalent, from motives of economy, as a protection from injury to employees and danger to property as well as from the humanitarian motive so obviously involved.

Believing, as I do, that the section of the state statute is a humane, reasonable and intelligent provision for promoting the safety of employees, passengers and property arising from special conditions on the lines of railway, and

that there is no federal provision having a like purpose, I decline to share in striking down as unconstitutional a law passed by the legislature of Pennsylvania, approved by the Public Service Commission of that State as reasonable and necessary and, as I think, by its highest court as constitutional.